Winter 1999 ◆ Number 18

The Women's Quarterly

Hands Off—You're Under Arrest!

What protection do women need in the workforce today?

A Symposium

Exclusive excerpt!
What Our Mothers Didn't Tell Us, the new book by Danielle Crittenden

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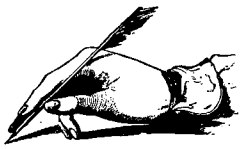
Diary



Back to the Future

FOR THE PAST four years, as editor of this little journal and a critic of feminism, I've often been accused of wanting to send women "back." Back to where is not usually spelled out. It's supposed to be obvious—back to split-levels and aprons, beehive hairdos and marriages to Ozzie Nelson. To question the impact of the past thirty years of social change upon women's lives is considered a provocative thing to do—at least if you're doing it from a non-feminist point of view. It's sort of like offering to make your husband a martini and fetch his slippers when he gets home from work. Or saying, "Actually I'd rather be at home with my kids than data processing." The first step on the slippery slope back to Fifties Hell.

Although feminism, as a conscious political movement, can boast fewer adherents today than the Czech communist party, its beliefs and assumptions about the way women should live their lives remain strong: We have absorbed the lesson that we should forgo—or postpone—marriage and children in order to forge careers; when married, we should not depend upon our husbands, either to stay married to us for the long haul or to support us when we have children; we should not ultimately look to our families for satisfaction or happiness—those things are best realized in our jobs, and in our spiritual growth as individuals.

That this wisdom may be faulty is bitter medicine to have to swallow. So many of us imbibed these ideas and plotted our lives according to them that even as we're reeling from their effect, grasping around for an antidote, we don't want to reject them. Yet reject them we must if we're to begin to solve the problems women face today.

For when you look around at modern women's lives, I think few of us would be able to say confidently that the progress we've made has resulted in net gain. Yes, we are freer than any generation of women in history to hold positions of power in the workplace and in government; but this has come at the expense of power over our personal lives. I've heard many accomplished modern women complain—without irony—that they don't have the "choices" their own mothers had.

Some are college graduates who simply can't figure out how they're going to do it all—or even just one piece of it: find a decent man to marry, have children and a career, and yet also enjoy the sort of family life that was often absent in their own upbringing, as the products of divorced and/or working parents. Some are successful thirtyish vice-presidents of companies or partners in law firms who fret that they will never be able to meet a man or have children. Some are working mothers who feel they have no choice but to work, even while their children are infants —just as a previous generation of women felt they had no choice but to stay home with their kids rather than work.

All of these women are bound together by the same problem: call it a new "problem with no name." And it's exactly the reverse of the old, 1950s problem with no name that Betty Friedan wrote about in her landmark book, *The Feminine Mystique*. In Friedan's time, the problem was that too many people failed to see that while women were women, they were also human, and they were being denied the ability to express and fulfill their potential outside the home. Today the problem is that while we recognize that women are human, we have blinded ourselves to the fact that we are also women. If we feel stunted and oppressed when denied the chance to realize our human potential, we suffer every bit as much when cut off from those aspects of life that are distinctly female—whether it's being a wife or raising children or making a home.

For if, as women, we were all to sit down and honestly attempt to figure out what sort of lives would make us happy, I suspect—assuming the basics like food and adequate income, and leaving aside fantasies of riches and celebrity—that most of our answers would be very similar to one another's, and quite different from men's. They would go something like this: We want to marry husbands who will love and respect and stay with us; we want children; we want to be good mothers. At the same time, many of us will want to pursue interests outside of our families, interests that will vary from woman to woman, depending upon her ambition and talent. Some women will be content with work or involvements that can be squeezed in around their commitments at home; some women will want or need to work at a job, either full- or part-time. Other women may be more *Continued on page 30*

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The Women's Quarterly

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Cover and cartoon (above) by Charles Jaffé

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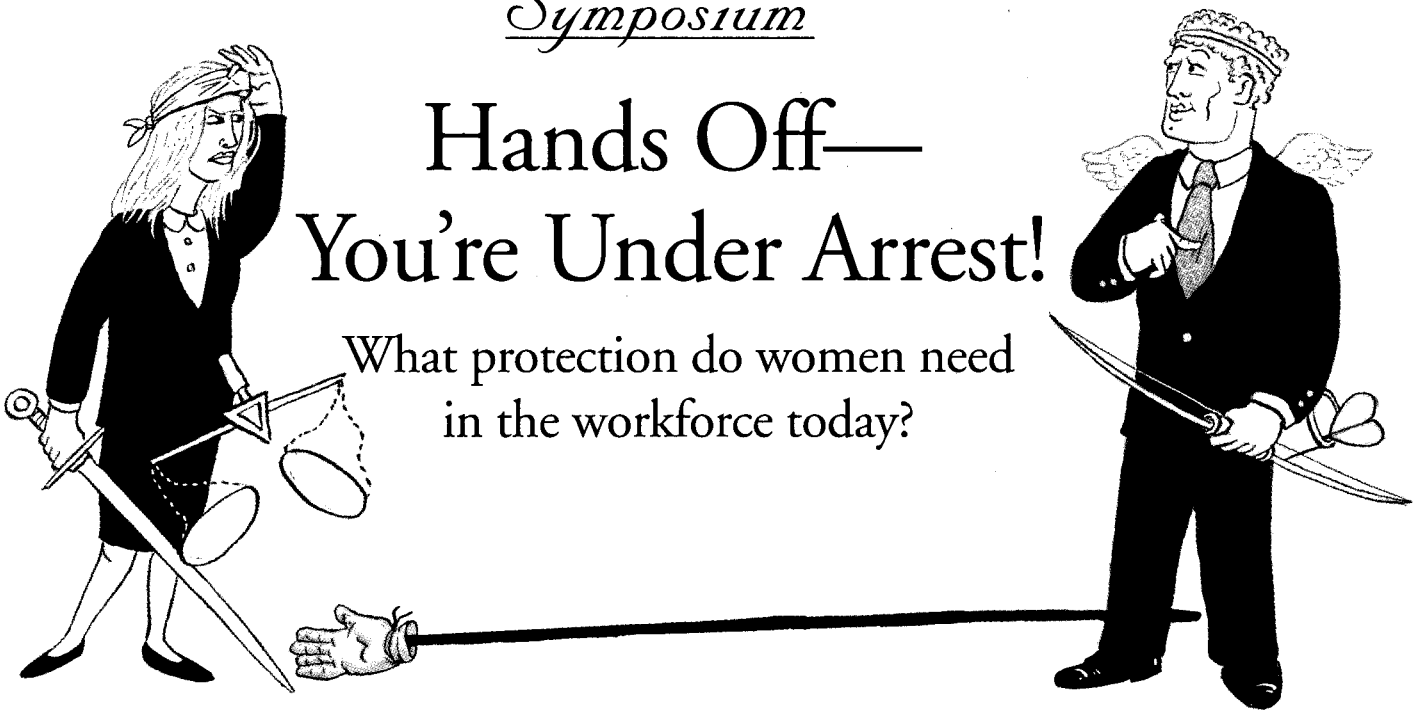
Symposium

Hands Off—You're Under Arrest!

What protection do women need in the workforce today?



WHILE DRILL SERGEANTS in Aberdeen serve prison time for having consensual sex with female underlings, their Commander-in-Chief appears to have successfully persuaded the majority of the population that sex in the Oval Office with a female underling is strictly a private matter. Warning to business executives: Don't try this in your own offices. Thankfully, the same President may have handed reformers the perfect political opportunity to fix the legal mess that is today's sexual harassment law: Both public opinion polls and feminist leaders express impatience with "sexual McCarthyism." So let's take this chance and run with it. The Women's Quarterly *asked a number of prominent thinkers and writers their views on what sort of protection—if any—women need in the workplace today. Here are their answers.*

A legacy of dirty laundry

Walter K. Olson

A FEW YEARS ago feminists rammed through Congress a bill allowing harassment lawyers to grill accused men broadly about their sexual histories in unrelated cases. Who signed into law this barbarous assault on privacy? None other than Bill Clinton, a modern Falstaff who thoughtfully sets out the soiled-laundry basket he'll tumble into.

If Congress does not at least repeal that provision, you'll know nothing whatever has been learned from Zippergate. Another helpful step would be to borrow from labor-union law what's known as the "free-speech" exemption: Speech shouldn't be admitted as evidence of a legal violation if it conveys neither a threat nor a promise. That would ease managers' fears that consensual water-cooler humor will someday cost them a fortune.

Back in 1977, one prescient federal appeals judge warned his colleagues about rushing hastily into this uncharted realm of liability: They were at risk of forgetting that romantic overtures at work "may not be intrinsically offensive" and are part of "social patterns that to some extent are normal and expectable." The opinion's author? The late George MacKinnon, whose daughter Catharine soon thereafter succeeded in remaking harassment law in her own fanatical, neo-Puritan image. Psychohistorians, take it away. ◆

Walter Olson is a senior fellow at the

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Manhattan Institute and author of The Excuse Factory: How Employment Law Is Paralyzing the American Workplace *(Free Press).*

Harassed? As if!

Marianne M. Jennings

The Henry Hyde hearings last fall frightened me. I worried that if Maxine Waters and Sheila Jackson Lee opened their mouths again, we would lose the Equal Pay Act. But the Waters/Lee brain trust did not scare me nearly as much as the testimony of Dr. Barbara Battalino, a former psychiatrist, and Ms. Pam Parsons, a basketball coach. Both testified at the Hyde hearings that they had committed perjury to cover up rather steamy aspects of their sex lives.

Now these were women who spoke out courageously at the hearings, but forgive me if I say they were clearly not vixen material. And each time the Supreme Court hands down one of its "everything is harassment" or "I know harassment when I see it" decisions and female plaintiffs appear on the courthouse steps, all I can think of is that there are some dang ugly folks who experience sexual harassment.

I have been in the workforce for thirty years and not once has anyone tried to hit on me. Life guards, secretaries, oil rig workers, and insurance agents (for crying out loud, someone harassed a person selling whole life?), have all been sexually harassed and permitted to share their adventures with federal courts everywhere, and I can't even dredge up a "Great legs!" compliment at work. The Hyde hearings forced me into introspection: Exactly what is wrong with me that I have not netted one workplace advance? I also feel cheated, much like my eighty-six-year-old friend, Esther, from Sun City, Arizona, who, upon reading about large awards in sexual harassment cases shouts, "Here I am! You can touch anything you want for a million bucks!" My introspection on being passed over for passes has brought me to the following conclusions:

1. I wish these women would stop whining. There are worse things in life than men finding you attractive: varicose veins, stretch marks, crow's feet, and having Hillary Clinton's husband.

2. It has nothing to do with power. It's called testosterone and it often emerges unchecked whether they supervise you or deliver your ham-and-Swiss on whole wheat.

3. The harassers don't look a whole lot better than the harassees. This is not a Grace Kelly/Cary Grant crowd. Basically what you have here is the pitiful preying on the weak. The day I can't handle a geek in bifocals and wing tips is the day I publish my weight and surrender my control-top panty hose.

4. How do people find the time for this stuff at work? The best thing to come out of l'affaire Lewinsky was the realization that the leader of the free world has a whole lot more time on his hands than I do. Yasser Arafat is not outside the door cooling his heels waiting for me, but my Franklin planner simply has no time blocks available for cigars, thong-snapping, or phone conversations not involving purchase orders or grade appeals.

5. There should be no sexual harassment claims or awards unless and until: (a) The harassee has slapped the harasser, or the harassee has whined so much to her supervisor or employer that the supervisor/employer has slapped her; and (b) the harassee agrees to share her formula for attracting passes with me. ◆

Marianne M. Jennings is a professor of legal and ethical studies in the College of Business at Arizona State University, and a weekly columnist for the Arizona Republic.

A tidying is in order

R. Gaull Silberman

The Clinton scandals have laid bare the difficulties of regulating and thus creating a public dimension to that most private and essential of human behavior, sexual conduct. However, I am troubled by the premise that the President's behavior provides "the perfect political opportunity to fix the legal mess that is today's sexual harassment law." That today's sexual harassment law is a legal mess is more a political statement than a legal one. And as one who was there at the creation of this important legal protection for working women, I think the statement is wrongheaded from both a legal and a political perspective.

To be sure, the issue of what sexual harassment is and what should be done about it has, from its beginning, been a combustible mixture of politics, law, and sex. Conceived by radical feminists in academia, the doctrine was legally born in a 1981 Equal Employment Opportunity Commission

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(EEOC) regulation which was reviewed by the Supreme Court four years later in *Meritor Savings Bank* v. *Vinson*. Clarence Thomas, then-chairman of the EEOC, and I had seen the nasty reality of sexual harassment in horrific cases brought to the commission. With women entering the workplace in greater and greater numbers, we thought it a matter of good public policy that the government defend the guidelines which provided necessary protection for working women.

To that end, we urged the Reagan justice department to craft a brief which established crucial distinctions between sexual conduct and sexual harassment: only unwelcome sexual conduct should constitute sexual harassment. We argued that employers should not be liable for all sexual conduct in the workplace especially when they had a well-publicized effective policy against sexual harassment and an avenue for complaint that bypassed the alleged harasser. Conversely, the employee was required to notify the employer that the conduct was occurring, unwelcome, and therefore harassment. With respect to liability, the government's brief argued for agency principles: the employer should be liable for the conduct only when he or she knew or should have known that the conduct was occurring and was unwelcome. We believed then—and I continue to believe—that unless liability was limited to unwelcome sexual conduct that was severe or pervasive, we would trivialize the protection.

To our surprise, feminist groups attacked our brief on the grounds that the employer should be strictly liable, that is, whenever harassment occurred. We were even more astonished when they did not share our elation at the Supreme Court's unanimous endorsement of the guidelines in *Meritor,* which largely adopted the EEOC's interpretation and theory.

Looking back I realize how incredibly naive we were. *We* thought we were establishing important and sensible protections for working women. But the political agenda of the creators of the doctrine was to get the broadest definition of sexual harassment and employer liability and to use the law, that tool of the patriarchy, to deconstruct what they viewed as the traditional and subjugated role of women in the workplace; indeed in the whole society. The *Meritor* decision was a decidedly mixed blessing for them. It did establish the legal theory but adopted sensible limitations. Some six years later the nation saw how a charge of sexual harassment could be used as a political weapon—ironically against Clarence Thomas, the person who was most responsible for making it a legal reality.

And what has happened since *Meritor*? Are we in a legal mess? Hardly. Subsequent Supreme Court and lower court sexual harassment jurisprudence generally reflects the rational, responsible policy course set in EEOC's brief in *Meritor*. That course, though not destined to make the radical transformation hoped for by Catharine MacKinnon and company, has effected important if less revolutionary changes in the workplace culture. And we should not underestimate the importance of those changes to millions of American women.

Instead of cleaning up a mess, perhaps we should think about a modest tidying. For instance, since the 1991 Civil Rights Act which applied punitive and compensatory damages to victims of sexual harassment, many frivolous lawsuits have been brought and settled because employers are understandably afraid of bad publicity and large verdicts. Three years ago I left the EEOC to head up the new agency Congress created to apply eleven employment and labor laws to itself, including laws against sexual harassment. But Congress also provided itself mandatory, confidential alternative dispute resolution which has been extraordinarily successful. Sexual harassment claims are particularly amenable to ADR, and EEOC should earmark some of its newly increased appropriation to replicate that model for the rest of the country.

Another area which does need to be fixed is Title IX. Sexual harassment is a form of discrimination in the workplace and should be covered under Title VII whether the employer is in academia, a factory, or a law firm. Sexual harassment in the form of uncivil or even criminal conduct in schools should not be covered. Much mischief and worse is being perpetrated in the name of educational equity to the detriment of important protection from sexual harassment in the workplace. ◆

R. Gaull Silberman is president of the Independent Women's Forum.

A more modest proposal

Wendy Shalit

THIS MAY BE stating the obvious, but there is a reason why we have our harassment laws. The more difficult question is, what are they substituting for, and what can we do to make them unnecessary?

Consider the 1909 man, so concerned about losing the favor of a young woman that he wrote to the

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Ladies' Home Journal: "Q: May I call upon a young woman whom I greatly admire, although she had not given me the permission? Would she be flattered at my eagerness, even to the setting aside of conventions, or would she think me impertinent?" The brisk reply was, "I think that you would risk her just displeasure and frustrate your object of finding favor with her. The proper way is for you to request a mutual friend to ask the young woman's permission."

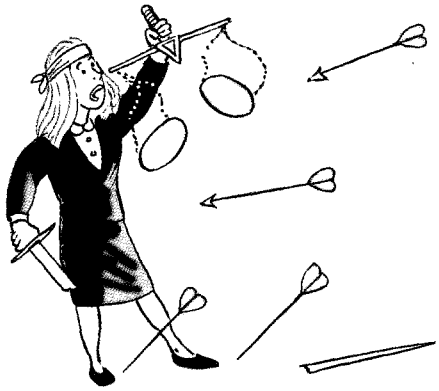
Being a conservative man used to mean acting like a gentleman—opening doors for women, not saying certain things in "mixed company," and generally acting honorably. Today, unfortunately, a young man calling himself conservative is more likely to mean by this that he enjoys telling dirty jokes, thinks date-rape is a fiction, and believes that "boys will be boys." Presumably, these lads deem themselves conservative because their public education has finally caught up with them: The oldest epoch they know about and can remember is the free-love heyday of recent memory, when there seemed to be fewer social consequences to personal choices and the women didn't seem to whine so much.

If Republicans advocate the repeal of sexual harassment legislation without spending at least as much time talking about what it means to be an honorable man, and without working to resurrect an even stricter social code, they will simply go down in history as the boorish party. This will be worse than being the stupid party, for a smart boor does more harm to society than a stupid gentleman. ◆

Wendy Shalit is author of A Return to Modesty: Discovering the Lost Virtue, *published by Free Press.*

Women are harmed—not protected—by current laws

Barbara Olson



When it comes to sexual harassment laws, most women simply don't get it. Do women in the workplace really believe that expansive legal protections against "offensive" conduct that imposes unpredictable liability, huge monetary awards, and irreversible public embarrassment to our potential employers will bring about equality in the workplace?

Like everyone, employers are generally risk-averse. Risks require taking chances and gambling against the security of the status quo that keeps the corporation healthy, profitable, and assures job security. When an employer has a choice between hiring: 1) a male employee with easily defined rights and remedies; or, 2) a similarly qualified female candidate accompanied by an ever changing and widening cache of new legal protections and rights, who do you think will be chosen? The costs potentially associated with hiring a woman rather than her "safer" male counterpart makes this an easy economic decision, especially when you add in the additional costs often associated with female employees: pregnancy, marriage, maternity leave, and primary family responsibilities.

When a senior male executive needs assistance on business matters out of town, does he want to take the risks of allowing a junior female employee to accompany him on these trips? What if she fails to succeed with the company and claims that her failure is due to the fact that she refused to sleep with that senior executive? After all, it's her word against his. They were alone, out of town, working late hours, and staying in hotel rooms. How can women gain the confidences of senior male executives to provide mentoring opportunities when a sexual harassment action may be brought whenever a woman believes she is in a hostile work environment?

Women will obtain equal opportunities in the workplace when gender-specific standards are eliminated—not enlarged. If we want to be treated and paid as equals, then we must act as and believe we are equals. The prohibitions of sexual harassment must be limited to clearly defined actions that are proven by objective standards. Our tort laws should be applied to prosecute assaults, batteries, threats, stalkings, defamation, and even the occasional indecent exposure by our elected officials. The sexual harassment laws should protect employees against sex discrimination that brings about an actual job detriment as a result of sex.

The current feminist agenda to expand the sexual harassment laws to cover all perceived wrongs in the workplace has backfired against women. Rather than trying to eliminate stereotypes, the standards of sexual harassment are based on them. It is time to demand equality in the law—even the laws that promise to protect women. ◆

Barbara Olson is a former federal prosecutor and a member of the IWF's national advisory board.

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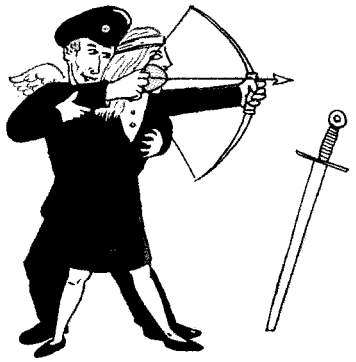
If it's good enough for the military...

Elaine Donnelly



ALMOST THREE YEARS ago, members of Congress were outraged by the widespread sexual harassment of female trainees at Aberdeen Proving Ground. Army Staff Sergeant Delmar Simpson was sentenced to twenty-five years in Leavenworth for abusing or threatening to abuse some of the women under his command. Most of the female soldiers testified, however, that they had willingly engaged in sexual misconduct with the "sexy" drill sergeant in exchange for preferential treatment.

In the Navy, the exchange of consensual sex for preferential treatment is called "The Game." But in the courtroom at Aberdeen, prosecutors called it "constructive force rape." The charge of constructive rape suggests that when a superior has power over a woman's career, resistance is not an option. It implies that even if she initiates or does not say "no" to sex with a superior, she is *always* a victim. The concept treats adult women as the legal counterparts of under-age girls victimized by statutory rape. But a subordinate woman is not a child, and the superior man who takes advantage of her is not a rapist.

In cases such as this, legal language is deficient. Consider Bill Clinton's sexual misconduct, which was consensual but exploitive. Feminists claimed that Monica Lewinsky's consent absolved Clinton of sexual harassment. But sexual misconduct that is consensual and exploitive—call it "consexploitation"—is not the same as harassment or rape. In the military and civilian workplace, charges of sexual misconduct should not be limited to harassment alone. The law must define the offense accurately, and assign penalties accordingly. ◆

Elaine Donnelly is president of the Center for Military Readiness.

Rudeness is not illegal

Anita K. Blair

SEX DISCRIMINATION IS not a feminist fantasy. It is an offense committed by employers when they refuse to hire, classify, pay, and promote women on the same basis as men. Sex discrimination, although far less prevalent today than thirty years ago, still exists. Nor is sexual harassment a mere illusion. It certainly exists. Rude, crude, and even criminal behavior that is "sexual" and "unwelcome" happens all the time, just about everywhere.

But the same conduct deemed "sexual harassment" by one recipient may be considered kicky fun, or a fine promotion opportunity, by another. And why should the sexually harassed have special rights denied to the "differently" harassed–those whose bosses are mean, stupid, drunk, smelly?

Sex-discrimination complaints should be limited to cases where employers, without good reason, treat men as a class differently than women as a class. This would not include such familiar scenarios as the "rogue-supervisor-hitting-on-subordinates" or the "office-romance-gone-sour." Under this formulation, it is possible that a "hostile environment" could constitute sex discrimination, but only if it hurt one sex as a class. Thus, if within the same workplace some women like it hot while other women don't, the problem is not sex discrimination but taste discrimination—or perhaps an employer with too much profit on its hands and no incentive to require its employees to work.

The Equal Employment Opportunity Commission (EEOC), rather than individual plaintiffs, should investigate and prosecute real sex-discrimination cases. What about cases that fall out of that category, but nonetheless constitute unwelcome sexual conduct in the workplace? "If the behavior's that awful, it's already unlawful" (and has been for hundreds of years).

For example, sexual assault is a crime. It can and should be prosecuted. Criminal and non-criminal conduct that is offensive probably constitutes one of several traditional torts: assault, battery, intentional infliction of mental distress, etc. Any "harassee" can sue under those laws.

Another idea: Why not treat employment like a contract (which it is anyway) with certain implied and express warranties? For example, any job should include an implied warranty that the employee will not be required to submit to sex in order to keep or improve her position. If this warranty is breached, she can sue for damages.

As in contract law generally a plaintiff might be entitled to monetary damages, but only rarely to specific performance. That is, the plaintiff couldn't force the company to change itself so that she feels good working there; but she could "cover" (quit and get another job) and claim the costs of that change. She might also be able to prove "lost profits" (future income lost as a result of

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interrupting career; compare her current prospects to the career path she left).

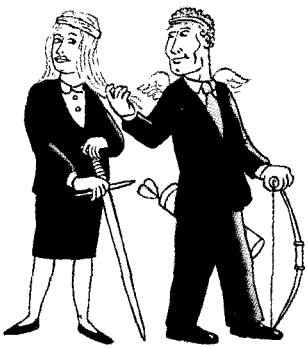
Businesses should be allowed to protect themselves by giving prospective employees written notice of the job requirements and conditions they may face. The notice could include disclaimers. For example: "All-Nite XXX Videos, Inc. makes no warranty whatsoever that your supervisors, fellow employees, customers, or the general public will not attempt to touch or seduce you, or tell or show you offensive things. You take this job with the knowledge that these things may happen, and you will have no legal claim against us."

Many observers acknowledge that sexual harassment is, at bottom, bad behavior. There will never be a true solution until all people treat one another with courtesy, respect, and dignity. And that is the job of families, schools, communities, churches, and a civil society. ◆

Anita Blair is executive vice president and general counsel of the Independent Women's Forum.

Nice hair, er, job!

Daniel E. Troy



A KEY PROBLEM in sexual harassment law has been the over-aggressive application of sexual harassment liability in so-called hostile environment cases. For example, in one famous case damages were awarded because a male graduate student had a picture on his desk of his bikini-clad wife. Not only have such claims promoted invasions of privacy and restrictions on expression, they have also reduced courtesy in the workplace.

To illustrate, my law firm's sexual harassment policy, like those of other firms, embodies common-sense prohibitions against quid pro quo harassment and other inappropriate behavior. Among our prohibitions (on advice of counsel) is a ban on "suggestive comments." Because it is hard to know what a suggestive comment is, some of us have reacted in what may seem like an excess of caution. A female attorney with whom I share a secretary recently upbraided me, in front of our secretary, for failing to notice and comment on the secretary's new hairstyle. I replied that I had noticed it, and that it was indeed attractive, but that I did not comment on any woman's appearance at work. I regret the possible slight to my secretary, but I will not change my practice. (Given the Supreme Court's recent decision extending sexual harassment to same-sex situations, I may in fact have to stop complimenting my coworkers' ties.)

More seriously, other men I know avoid being alone behind closed doors with a woman associate, which definitely impedes mentoring. Thus, if pushed to the limits, as it has been, sexual harassment law can end up harming women instead of protecting them.

The pendulum has swung too far; we can only hope that the Clinton mess will spur reforms ensuring that employees are protected, as they should be, against egregious cases of harassment. At the same time, we must recover the principle of *de minimis non curat lex* ("the law does not take account of trifles"). ◆

Daniel E. Troy is a Washington attorney and an associate scholar of legal studies at the American Enterprise Institute.

Litigious nation

Betsy Dorminey

IS SEXUAL HARASSMENT law a mess? In one sense, of course it is, but the same may be said about tort law, product liability, antitrust.... We're a litigious nation because ours is a heterogeneous population that regulates conduct by external laws rather than internal social controls.

What conduct could be more difficult to regulate by law than sexual conduct? The tension inherent between the sexes inevitably manifests itself in the workplace. In today's world men and women must work together, but the social consensus is that men shouldn't be allowed to engage in sexually predatory behavior on the job. I agree. The significance, and fundamental truth, of the Supreme Court's 1986 decision in *Meritor Savings Bank* v. *Vinson*, is that it recognized that sexual harassment is bad, just as disparate treatment based on race, sex, color, and religion are bad.

The Supreme Court's decisions in *Burlington Industries Inc.* v. *Ellerth* and *Faragher* v. *City of Boca Raton*, last term are at least a mixed blessing. I see them as a small but perhaps Pyrrhic political victory for the feminist faction obsessed with power dynamics, class struggle, and victimhood, buttressed by the trial lawyers and their "deep pocket" radar. I welcome the holding that a person who fails to take

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advantage of a mechanism for complaining about ill treatment forfeits any recovery. This serves the laudable social goals of encouraging employers to adopt sound policies and procedures to prevent and remedy harassment while requiring individuals to take a greater degree of responsibility for protecting and defending themselves. The decisions were candid about wanting to change behavior, and that will be their legacy. It's not just social engineering by the Nine, though. Title VII's avowed purpose was to change behavior, and the Court's decisions unquestionably carry out Congress' intent in that regard.

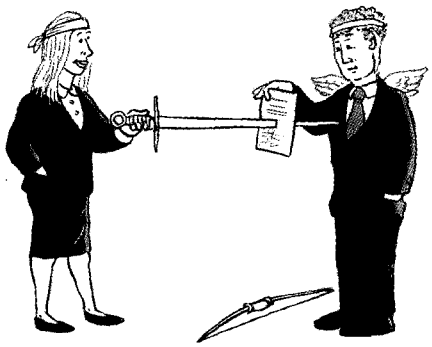
Significant monetary damages since 1991 have magnified sexual harassment litigation beyond all proportion. Nonetheless, based on my experience defending employers in Title VII cases, the Federal District Courts and Courts of Appeal generally are applying these laws in a rational manner and reaching reasonable results. So far (knock on wood) I usually win summary judgment when plaintiffs file ridiculous cases. Meritorious cases usually settle before trial. All the same, I would rather see sexual harassment cases settled through arbitration, bypassing emotional juries. Lurking in the 1991 Civil Rights Act is an underutilized provision encouraging arbitration of Title VII cases. I would like to see the insurance companies that sell employment liability insurance (going like hotcakes these days) offer financial incentives to employers who implement good, confidential, internal dispute resolution procedures. If arbitration doesn't expand, I won't be surprised if the courts off-load these disputes to some alternative forum if filings continue at current levels.

In its current state the law on sexual harassment isn't the problem. The torrent of litigation we have waded through since the 1991 Act made lawsuits more lucrative has produced greater certainty as to what sorts of conduct will be punished. The beauty and the horror of our legal system is that anyone who can come up with a filing fee can sue. *Burlington Industries* and *Faragher* may not provide a guaranteed safe harbor, but they are aids to navigating these troubled waters, and I think they will produce a more predictable workplace for employers and a more civil workplace for all. ◆

Betsy Dorminey is a lawyer in Athens, Georgia.

Neither fish nor bicycle

Michael Greve



Like other ordinary Americans, working women need two things: the protections of tort and criminal law (assault, battery, etc.) and a functioning system of contract law.

Sexual harassment is an employment risk, like bodily injury (which overwhelmingly affects men) and obnoxious bosses. The risks aren't nice, but righteous indignation won't make them go away. Whether it's groping or broken limbs, dirty jokes, or appalling rudeness, the question is how to reduce the risk effectively and in a manner that reflects widely varying tastes and preferences.

In a competitive labor market, women (and men) will sort themselves into occupations that reflect their individual tolerance for various risks, and they'll bargain for protections that suit them. Some women will opt and bargain for the shelter and comfort of workplaces that provide NOW-certified harassment policies. Others will sort themselves into more sexualized environments that, come to think of it, may offer opportunities as well as risks. High-risk jobs will tend to pay a wage premium; employees who think the risk isn't worth the money can take their talents elsewhere.

On the presumption that women are too meek or too ditzy to hack it in the labor market, the courts have replaced contracts with uniform, centralized harassment rules that reflect no one's preferences except, perhaps, Patricia Ireland's. It's too late to wipe the slate clean. At least for purposes of public debate, though, we should consider an opt-out regime: let employment relations be governed by the existing sexual harassment standards unless employers and employees agree on different contractual arrangements. The arrangements will vary across firms and industries, and some may offer less protection than the existing rules. But why insist on protections that neither party wants?

We effectively permit such opting-out when harassment is part of the job description. Neither the courts nor even Catharine MacKinnon would permit a stripper to sue over catcalls. What's missing is the recognition that the "extreme" examples illustrate the general case for letting everyone opt out.

What's wrong with sexual harassment law is not so much its content but its tyrannical scope. There's no escape. But even NOW wants escapes

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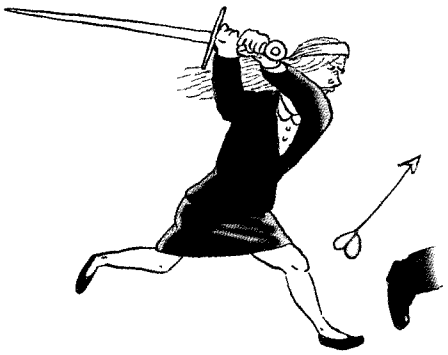
for male friends in high places. Let there be escapes for women: Many of them find that they need sexual harassment law like a fish needs a bicycle. ◆

Michael Greve is executive director of the Center for Individual Rights in Washington.

Manners police

Cathy Young



The Clinton scandals offered an excellent opportunity to roll back the crusade against sexual harassment. Public sympathy for the President seems to stem largely from revulsion against "sexual McCarthyism." Americans may not approve of a middle-aged married man carrying on with a young subordinate and lying about it under oath, but they find it at least as outrageous that a sexual harassment complaint should allow the defendant to be questioned under oath about unrelated affairs with uncomplaining women. They recognize that accusers may have ulterior motives and that encounters labeled as "sexual harassment" may involve complex, reciprocal dynamics. They are inclined to think that a suit for damages should involve actual damage to the plaintiff.

With the feminists too hobbled by loyalty to Clinton to suppress these heresies, even making fun of a woman who claims harassment (Paula Jones) is suddenly all right. Unfortunately, conservatives who have long criticized the excesses of the war on sexual harassment are missing the boat—mainly because they have succumbed to the temptation of using harassment charges as a political weapon. They are now piously warning that letting the President off the hook may undermine our laws against sexual harassment.

What should the reformers do? Conduct a "teach-in" about the devastation "sexual McCarthyism" has inflicted on thousands of people who don't have the President's resources to defend themselves. And, of course, push for changes. Sexual advances on the job should be actionable if there is actual or threatened retaliation for rejection; one should also be able to sue an employer who takes no action to stop sexual assault in the workplace. As for what feminists now call "boorish behavior," grown-ups can handle such things on their own. Employers have every right to demand civility of employees. But they shouldn't have to fear legal liability if they refuse to act as a manners police. ◆

Cathy Young is vice president of the Women's Freedom Network and author of Ceasefire: Why Women and Men Must Join Forces to Achieve True Equality, *published by Free Press.*

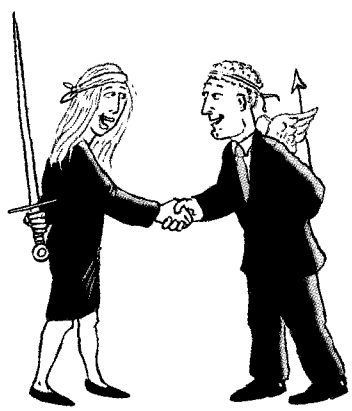
Truth will win

Marie-José Ragab

The 1986 Supreme Court has to be aghast at what the Democrats and their ventriloquists are doing to their law. Dubbed "conservative" by the shrieking feminists, the judges revealed themselves revolutionaries when they decided that sexual harassment was another form of discrimination against women. It meant that for the first time in the history of mankind, a country officially recognized that its women had the right to work and study in an atmosphere reasonably free of pornography and prostitution. In crafting the legal tools needed to achieve this goal, the high court dismantled centuries of universal male privilege and shook society to its foundation, showing no surprise when the only ones to applaud were the harassed. In a flash, the news brought hope to women around the world and horror to the international brotherhood whose self-preservation instinct wasted no time ridiculing the law and the nation that bore it.

Combined with other American curiosities whereby the powerful are neither above the law nor can alter its pace, it became a matter of time before the demonic legal mixture would explode into presidential judicial hearings. Those who watched the event and still look upon the Democrats as defenders of women's rights do deserve our empathy, but a far-sighted Fate had already placed the safeguarding of our laws into Republican hands again, for truth was on their side. ◆

Marie-José Ragab is president of the Dulles-area chapter of the National Organization for Women.



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The Token Man

Wedding Swells

Justin Torres reveals why those nice young men aren't married

FORCED JOY IS always stressful, and there's no event where the mirth is more programmed than when two people take the vows. After all, there's always a million things to be organized, purchased, fitted, and arranged. The strain is enough to vanquish even the most mentally healthy of families; for your average dysfunctional American clan like mine, the psychological stress results in a full-blown rout.

I remember my uncle's wedding, to which my grandfather, serving as best man, brought as his guest the girlfriend for whom he had recently left his third wife. The aggrieved party—who had also been invited—pouted in the back until someone pointed out that she, too, had been the other woman not all that long ago, at which point she left in a huff. Such is the stuff of modern matrimony.

You always hope that the bride and groom are too enthralled to notice that everyone around them has gone slightly batty, and it's usually all the wedding party can do to keep the violence and sniping to a decent minimum. Recently, at the wedding of a college friend, two of my closest buddies got into a fight at the after-ceremony party, apparently over a female guest who gave them both promises of love—a Nineties version of pistols at dawn, only with less chivalrous intentions. And of course for the ostentatiously unmarried, twentysomething man like me, weddings raise all kinds of dark premonitions. People start shooting you disapproving glances: Get with the program, buddy. I usually try to ignore these glances, since weddings—and more to the point, the years that inevitably follow them—scare the beejeezus out of me.

I can't quite help this oafish attitude; in fact, I blame it—not altogether convincingly—on society. Marriage didn't have a lot of cheerleaders in my youth besides my parents, the priests at my Catholic school, and the Republican Party, and who wants to listen to them when you're sixteen? Much better to watch TV, which usually depicts marriage as a royal pain, fraught with turbulence, divorce, mouthy children, and other undesirable side effects. And being a bachelor has only increased my reluctance to get married. America today is pretty easy on bachelors; no one expects much from you, and your slovenly behavior is largely indulged. There remains, despite thirty years of feminism, a sexist double-standard: When my apartment is a mess of take-out Chinese containers, unwashed clothing, and old newspapers, it's considered quaint; if an un-

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married woman lived the way I do, right-minded people would be horrified.

But here's the real sexist secret: Life now is a buyer's market for bachelors. They can go out if they want without waiting for someone to call, or veg in front of the TV without being maddened by the relentless tick of a biological clock. Women's lib has eliminated the old problem of lack of sex for men with easy consciences; any reasonable man who has no obviously disastrous social qualities can always find female companionship for an evening out. Indeed, modern bachelorhood has the free and rambling feel of Roger Miller's ballad "King of the Road," only with nicer clothes and more expensive rent.

So that's why, despite the fact I'm what might be broadly categorized as the "marrying type"—I have a decent job, a good Catholic upbringing, and no visible tattoos—I usually run like a man possessed whenever weddings are imminent. So you can imagine my apprehension when my girlfriend told me that I was expected to escort her to the nuptials of an old family friend back in Ohio.

Images of past wedding disasters arose in my mind, but my fears ran deeper. She's known the groom since elementary school, they dated in high school, he was her first kiss, and her date to the prom. More frightening, this was my first meeting with her family. All very groundbreaking stuff, and she's not above ratcheting up the pressure. While I searched my brain for reasons I couldn't possibly attend, she put her hand on my arm and assumed the coquettish air she always affects when she's about to say something I'm not going to like.

"You know how you sometimes get quiet when you first meet people? Well, you can't do that."

"What am I supposed to do?"

She smiled indulgently. "Be yourself. Just be charming about it."

Oh.

I determined to go and not be weird about it all, but I worried that the awkwardness of this whole, thoroughly modern situation would defeat me. First, I'm, attending the nuptials of a man who once had eyes for my girlfriend. Second, I'm attending as neither fish nor fowl: neither as husband, nor even imminent husband, of a guest. From the point of view of the wedding party, I'm a stray—a Wedding Companion. And as simply a Wedding Companion, my purpose seems to be much like that of a quiet, well-cut suit: to make my girlfriend look attractive and successful without upstaging her. Yet meeting her family, especially when "charm" is called for, is a different matter: I am then definitely on display. How to balance the two? My plans were well-laid but, I fear, ill-executed.

Right away, I broke out in hives. I still don't know why; it had never happened to me before, and I continue to reject the suggestion that they were, as the emergency room doctor tactfully put it, "stress-related." As it was, we left for Cleveland at midnight, and on the way out of Washington I noticed a few red bumps on my arm. Seven hours later I itched like crazy and was covered in swatches of raised, flat welts from neck to ankle. My girlfriend was her usual solicitous self: "You don't have any on your face, do you?" she asked worriedly, as if to say, "Great, my high school sweetheart is getting married and I bring the Elephant Man to the ceremony." Later, as the IV dripped Benadryl into my arm, I reflected on this less-than-auspicious beginning. *Nice to meet you, Mom and Dad, and so sorry I've brought leprosy into your home.*

Then there was the wedding ceremony and reception, perhaps the most nerve-wracking of the various wrenching positions that modern dating can thrust upon a man. You spend hours in complete boredom, clapping politely at speeches given in honor of people you've never met, punctuated by moments of terror as you flail wildly for something witty to say upon introduction. I spent my time trying to drink just enough to look sophisticated while not appearing to be an alcoholic.

At one point, my girlfriend's younger sister sidled over and sat down next to me. With all the adolescent frankness of her seventeen years, she announced, "You're cooler than I thought you'd be."

Okay, I thought, *I can work with this.* "What did you think I'd be?"

"I don't know—kind of conservative and humorless."

The rest of the weekend went fairly smoothly. We met the extended family for dinner on Sunday evening for a whole new round of introductions and discreet assessments of my character and net worth, but the drugs had worn off by that point and I felt more on my game. After dinner, as my girlfriend and I set off across the dark fields of Ohio for our second overnight drive in three days, she leaned against my arm and sighed contentedly.

"Did I do okay?" I asked, ready for the worst.

She smiled. "You were great. I think they liked you. Yeah, it went really well."

I smiled in reply and breathed easily for the first time in three days. *That wasn't so bad*, I thought. *Not bad at all. Why, I might even be able to do that myself some....*

I let the thought go unfinished as we drove east into the night. ◆

Justin Torres is managing editor of Crisis *magazine in Washington, D.C.*

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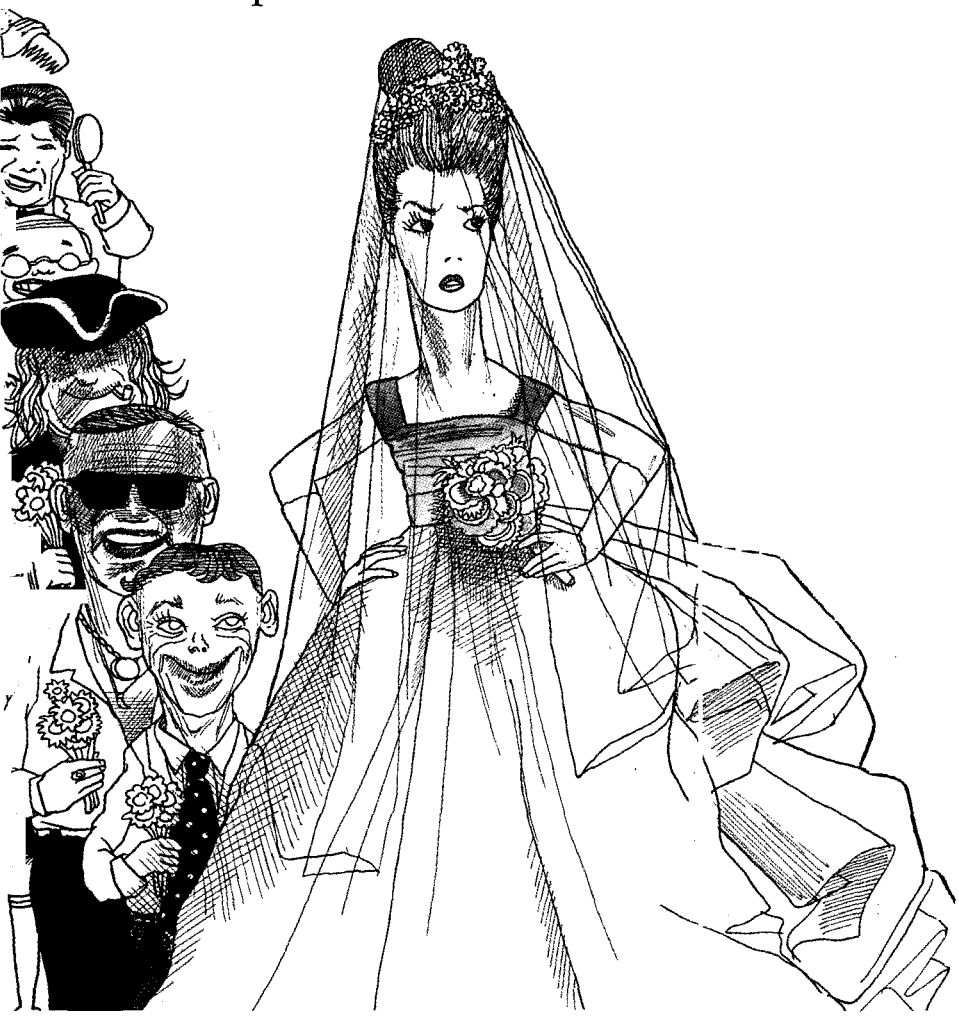
What Our Mothers Didn't Tell Us

Delaying marriage comes with a price—not a prince, observes *Danielle Crittenden*



Our grandmothers, we are told, took husbands the way we might choose our first apartment. There was a scheduled viewing, a quick turn about the interior, a glance inside the closets, a nervous intake of breath as one read the terms of the lease, and then the signing—or not. You either felt a man's charms right away or you didn't. If you didn't, you entertained a few more prospects until you found one who better suited you. If you loved him, really loved him, all the better. But you also expected to make compromises. The view may not be great, but it's sunny and spacious (translation: he's not that handsome, but he's sweet-natured and will be a good provider).

Whether you accepted or rejected him, however, you didn't dawdle. My late mother-in-law, who married at twenty, told me that in her college circles in the mid-1950s, a man who took a woman out for more than three dates without intending marriage was considered a cad. Today, the man who considered marriage so rashly would be thought a fool. Likewise, a woman.

Instead, like lords or sailors of yore, a young woman is encouraged to embark upon the world, seek her fortune and sow her oats, and only much later—closer to thirty than twenty—consider the possibility of settling down. Even religious conservatives, who disapprove of sex outside of marriage, accept the now-common wisdom that it is better to put off marriage than do it too early. The popular radio host, Laura Schlessinger, traditional in so many of her views, constantly tells her listeners not to consider going to the altar much before thirty. In 1965, nearly 90 percent of women aged twenty-five to twenty-nine were married; by 1996, only 56 percent of women in this age group were. Indeed, the more educated and ambitious a woman is the more likely she is to delay marriage and children, the Census Bureau reports. And if she doesn't—if such a young woman decides to get married, say, before she is twenty-five—she risks being regarded by her friends as a tragic figure, spoken of the way wartime generations once mourned the young man killed in battle: "How unfortunate, with all that promise, to be cut down so early in life!"

I remember congratulating a young woman upon her recent marriage to a friend of mine and commenting perfunctorily that both of them must be very happy. She was twenty-four at the time. She grabbed my hand, held it, and said with emotion, "Thank you!" As it turned out, I'd been the only woman to offer her congratulations

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without immediately expressing worry that she'd done the wrong thing. Her single female friends had greeted her wedding announcement as a kind of betrayal. A few had managed to stammer some grudging best wishes. Her best friend nearly refused to be a bridesmaid. They simply couldn't fathom why she'd tossed away her freedom when she was barely out of college. And she, in turn, couldn't convince them that she really had met the man she wanted to marry, that she didn't want to keep going out to bars in the evenings and clubs on the weekends, postponing her marriage for half a decade until she reached an age that her friends would consider more suitable.

In this sense, we lead lives that are exactly the inverse of our grandmothers'. If previous generations of women were raised to believe that they could only realize themselves within the roles of wife and mother, now the opposite is thought true: It's only outside these roles that we are able to realize our full potential and worth as human beings. A twenty-year-old bride is considered as pitiable as a thirty-year-old spinster used to be. Once a husband and children were thought to be essential to a woman's identity, the source of purpose in her life; today, they are seen as peripherals, accessories that we attach only after our full identities are up and running.

And how are we supposed to create these identities? They are to be forged by ourselves, through experience and work and "trial" relationships. The more experience we have, the more we accomplish independently, the stronger we expect our character to grow. Not until we've reached full maturity—toward the close of our third decade of life—is it considered safe for a woman to take on the added responsibilities of marriage and family without having to pay the price her grandmother did for domestic security, by surrendering her dreams to soap powders, screaming infants, and frying pans. But there is a price to be paid for postponing commitment, too. It is a price that is rarely stated honestly, not the least because the women who are paying it don't realize how onerous it will be until it's too late.

I REMEMBER HAVING, in my early twenties, long and passionate conversations with my female friends about our need to be strong, to stand alone, to retain our independence and never compromise our souls by succumbing to domesticity. And yet at the same time, we constantly felt the need to shore each other up. We'd come across passages in books—paeans to the autonomy of the individual, replete with metaphors of lighthouses, mountains, the sea, etc.—copy them out carefully (in purple ink, on arty cards), and mail them to each other. It was as if despite our passion for independence, despite our confidence in ourselves as independent women, we somehow feared that even a gentle gust of wind blowing from the opposite direction would send us spiraling back into the 1950s, a decade none of us had experienced first-hand but one that could induce shudders all the same.

Our skittishness was all the more surprising given that most of my friends' mothers, as well as my own, worked at interesting jobs and had absorbed as deeply as we had the cultural messages of the time. When I look back upon it, I think our youthful yearning to fall in love must have been enormously strong and at war with our equally fierce determination to stay free. We were fighting as much a battle against ourselves as against the snares of domesticity. And if one of us were to give way, the rest would feel weakened in our own inner struggles, betrayed by our friend's abandonment of the supposedly happy, autonomous life. For the truth is, once you have ceased being single, you suddenly discover that all that energy you spent propelling yourself toward an independent existence was only going to be useful if you were planning to spend the rest of your life as a nun or a philosopher on a mountaintop or maybe a Hollywood-style adventuress who winds up staring into her empty bourbon glass forty years later wondering if it was all damn worth it. In preparation for a life spent with someone else, it was not going to be helpful.

And this is the revelation that greets the woman who has made almost a religion out of her personal autonomy. She finds out, on the cusp of thirty, that independence is not all it's cracked up to be. "Seen from the outside, my life is the model of modern female independence," wrote Katie Roiphe in a 1997 article for *Esquire* entitled "The Independent Woman (and Other Lies)." "I live alone, pay my own bills, and fix my stereo when it breaks down. But it sometimes seems like my independence is in part an elaborately constructed facade that hides a more traditional feminine desire to be protected and provided for: I admitted this once to my mother, an ardent seventies feminist...and she was shocked....I rushed to reassure her that I wouldn't dream of giving up my career, and it's true that I wouldn't."

Roiphe then goes on to puzzle over how a modern woman like herself could wish for a man upon whom she could depend. "It may be one of the bad jokes that history occasionally plays on us," she concluded, "that the independence my mother's generation wanted so much for their daughters

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was something we could not entirely appreciate or want."

Unfortunately, this is a bit of wisdom that almost always arrives too late. The drawbacks of the independent life, which dawned upon Roiphe in her late twenties, are not so readily apparent to a woman in her early twenties. And how can they be? When a woman is young and reasonably attractive, men will pass through her life with the regularity of subway trains; even when the platform is empty, she'll expect another to be coming along soon. No woman in her right mind would want to commit herself to marriage so early. Time stretches luxuriously out before her. Her body is still silent on the question of children. She'll be aware, too, of the risk of divorce today, and may tell herself how important it is to be exposed to a wide variety of men before deciding upon just one. When dating a man, she'll be constantly alert to the possibilities of others. Even if she falls in love with someone, she may ultimately put him off because she feels just "too young" for anything "serious." Mentally, she has postponed all these critical questions to some arbitrary, older age.

But if a woman remains single until her age creeps up past thirty, she may find herself tapping at her watch and staring down the now mysteriously empty tunnel, wondering if there hasn't been a derailment or accident somewhere along the line. When a train does finally pull in, it is filled with misfits and crazy men—like a New York City subway car after hours; immature, elusive Peter Pans who won't commit themselves to a second cup of coffee, let alone a second date; neurotic bachelors with strange habits; sexual predators who hit on every woman they meet; newly divorced men taking pleasure wherever they can; embittered, scorned men who still feel vengeful toward their last girlfriend; men who are too preoccupied with their careers to think about anyone else from one week to the next; men who are simply too weak, or odd, to have attracted any other woman's interest. The sensible, decent, not-bad-looking men a woman rejected at twenty-four because she wasn't ready to settle down all seem to have gotten off at other stations.

Or, as it may be, a woman might find herself caught in a relationship that doesn't seem to be going anywhere or living with a man she doesn't want to marry. Whatever her circumstances, the single woman will suddenly feel trapped—trapped by her own past words and actions—at the same moment other desires begin to thrust themselves upon her.

So much has been written about a woman's "biological clock" that it has become a joke of television sitcoms: career women who, without warning, wake up one morning after thirty with alarm bells ringing in their wombs. Actually, the urge for children and everything that goes with them—not just a husband, but also a home and family life—often comes on so gradually that it's at first easily brushed away. What a woman is aware of, at around the age of twenty-six or twenty-seven, is a growing, inchoate dissatisfaction, a yearning for more, even if her life is already quite full. Her apartment feels too quiet, her work, no matter how exciting or interesting, is less absorbing, and her spare time, unless packed with frenetic activities, almost echoes with loneliness: Think of an endless wintry Sunday afternoon unbroken by the sound of another voice.

She starts noticing the mothers all around her—especially young, attractive mothers—pushing strollers down the street, cooing at their babies in supermarkets, and loading up their shopping carts with enormous quantities of meat, vegetables, cans, jars, boxes of detergent, and packages of diapers, as she purchases a few meager items for her own dinner. All the horrors she once connected with babies—their noise and messiness, their garish plastic toys, their constant crying and demands that wear down and dull even the most strong-minded of women—are eclipsed by their previously underestimated virtues: their cuteness, their tiny shoes and mittens, their love and wonder, and, perhaps most enviable of all, the change of life they cause, pulling a woman out of herself and distracting her from her own familiar problems.

Alas, it's usually at precisely this moment—when a single woman looks up from her work and realizes she's ready to take on family life—that men make themselves most absent. This is when the cruelty of her singleness really sets in, when she becomes aware of the fine print in the unwritten bargain she has cut with the opposite sex. Men will outlast her. Men, particularly successful men, will be attractive and virile into their fifties. They can start families whenever they feel like it. So long as a woman was willing to play a man's game at dating—playing the field, holding men to no expectations of permanent commitment—men would be around, they would even live with her! But the moment she began exuding that desire for something more permanent, they'd vanish. I suspect that few things are more off-putting to a man eating dinner than to notice that the woman across the table is looking at him more hungrily than at the food on her plate—and she is

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not hungry for his body but for his whole life.

So the single woman is reduced to performing the romantic equivalent of a dance over hot coals. She must pretend that she is totally unaware of the burning rocks beneath her feet and behave in a way that will convince a man that the one thing she really wants is the furthest thing from her mind. She might feign indifference to his phone calls and insist she's busy when she's not. When visiting friends who have small children, she might smile at them or politely bat them away or ask questions about them as if they're a species of plant and she's not someone particularly interested in botany. Whatever she does, though, she cannot be blamed for believing, at this point in her life, that it is men who have benefited most from women's determination to remain independent. I often think that moderately attractive bachelors in their thirties now possess the sexual power that once belonged only to models and millionaires. They have their pick of companions, and may callously disregard the increasingly desperate thirtyish single women around them, or move on when their current love becomes too cloying. As for the single woman over thirty, she may be in every other aspect of her life a paragon of female achievement; but in her romantic life, she must force herself to be as eager to please and accommodate male desire as any 1920s cotillion debutante.

A woman's decision to delay marriage and children has other consequences—less obvious than the biological ones and therefore harder to foresee. It is not simply the pressure of wanting a baby that turns those confident twenty-five-year-old single career women you see striding through busy intersections at lunch hour, wearing sleek suits and carrying take-out salads to eat at their desks, into the morose, white wine-drinking thirty-five-year-old executives huddled around restaurant tables, frantically analyzing every quality about themselves that might be contributing to their stubbornly unsuccessful romantic lives.

By spending years and years living entirely for yourself, thinking only about yourself, and having responsibility to no one but yourself, you end up inadvertently extending the introverted existence of a teenager deep into middle age. The woman who avoids permanent commitment because she fears it will stunt her development as an individual may be surprised to realize in her thirties that having essentially the same life as she did at eighteen—the same dating problems, the same solitary habits, the same anxieties about her future, and the same sense that her life has not yet fully begun—is stunting, too.

For when a woman postpones marriage and motherhood, she does not end up thinking about love less as she gets older but more and more, sometimes to the point of obsession. Why am I still alone? she wonders. Why can't I find someone? What is wrong with me? Her friends who have married are getting on with their lives—they are putting down payments on cars and homes; babies are arriving. She may not like some of their marriages—she may think her best friend's husband is a bit of a jerk or that another one of her friends has changed for the worse since her marriage—but nonetheless, she will think that at least their lives are going forward while her gearshift remains stuck in neutral. The more time that passes, the more the gearshift rattles, the more preoccupied the woman becomes with herself and all her possible shortcomings in the eyes of men until she can think about little else.

This may be the joke that history has actually played upon us—and a nasty one it is. The disparity in sexual staying power is something feminists rather recklessly overlooked when they urged women to abandon marriage and domesticity in favor of autonomy and self-fulfillment outside the home. The generation of women that embraced the feminist idealization of independence may have caused havoc by walking away from their marriages and families, but they could do so having established in their own minds that these were not the lives they wanted to lead: Those women at least had marriages and families from which to walk away. The thirty-three-year-old single woman who decides she wants more from life than her career cannot so readily walk into marriage and children; by postponing them, all she has done is to push them ahead to a point in her life when she has less sexual power to attain them.

Instead, she must confront the sad possibility that she might never have what was the birthright of every previous generation of women: children, a family life and a husband who—however dull or oppressive he might have appeared to feminist eyes—at least was there. As this older single woman's life stretches out before her, she'll wonder if she'll ever meet someone she could plausibly love and who will love her in return or whether she's condemned to making the rest of her journey on the train alone. She might have to forgo her hope of youthful marriage and the pleasure of starting out fresh in life with a husband at the same stage of the journey as herself. She may have to consider looking at men who are much

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older then she is, men on their second and third marriages who arrive with an assortment of heavy baggage and former traveling companions. These men may already have children and be uninterested in having more, or she'll have to patch together a new family out of broken ones. Or, as time passes and still no one comes along, this woman might join the other older single women in the waiting rooms of fertility clinics, the ones who hope science will provide them with the babies that the pursuit of independence did not.

From a feminist view, it would be nice, I suppose—or at the very least handy—if we were able to derive total satisfaction from our solitude, to be entirely self-contained organisms, like earthworms or amoebas, having relations with the opposite sex whenever we felt a need for it but otherwise being entirely contented with our own company. Every woman's apartment could be her Walden Pond. She'd be free of the romantic fuss and interaction that has defined, and given meaning to, human existence since its creation. She could spend her evenings happily ensconced with a book or a rented video, not having to deal with some bozo's desire to watch football or play mindless video games. How children would fit into this vision of autonomy, I'm not sure, but surely they would infringe upon it; perhaps she could simply farm them out.

If this seems a rather chilling outcome to the quest for independence, well, it is. If no man is an island, then no woman can be, either. And it's why most human beings fall in love, and continue to take on all the commitments and responsibilities of family life. We want the noise and embrace of family around us; we want, at the end of our lives, to look back and see that what we have done amounts to more than a pile of pay stubs, that we have loved and been loved, and brought into this world life that will outlast us.

We strengthen a muscle by using it, and that is true of the heart and mind, too. By waiting and waiting and waiting to commit to someone, our capacity for love shrinks and withers. This doesn't mean that women or men should marry the first reasonable person to come along, or someone with whom they are not in love. But we should, at a much earlier age than we do now, take a serious attitude toward dating and begin preparing ourselves to settle down. For it's in the act of taking up the roles we've been taught to avoid or postpone—wife, husband, mother, father—that we build our identities, expand our lives, and achieve the fullness of character we desire.

Still, critics may argue that the old way was no better; that the risk of loss women assume by delaying marriage and motherhood overbalances the certain loss we'd suffer by marrying too early. The habit of viewing marriage as a raw deal for women is now so entrenched, even among women who don't call themselves feminists, that I've seen brides who otherwise appear completely happy apologize to their wedding guests for their surrender to convention, as if a part of them still feels there is something embarrassing and weak about an intelligent and ambitious woman consenting to marry. But is this true? Or is it just an alibi we've been handed by the previous generation of women in order to justify the sad, lonely outcomes of so many lives?

What we rarely hear—or perhaps are too fearful to admit—is how liberating marriage can actually be. As nerve-wracking as making the decision can be, is it also an enormous relief once it is made. The moment we say, "I do," we have answered one of the great crucial questions of our lives: We now know with whom we'll be spending the rest of our years, who will be the father of our children, who will be our family. That our marriages may not work, that we will have to accommodate ourselves to the habits and personality of someone else—these are, and always have been, the risks of commitment, of love itself.

What is important is that our lives have been thrust forward. The negative—that we are no longer able to live entirely for ourselves—is also the positive: We no longer have to live entirely for ourselves! We may go on to do any number of interesting things, but we are free of the growing wonder of with whom we will do them. We have ceased to look down the tunnel, waiting for a train.

The pull between the desire to love and be loved and the desire to be free is an old, fierce one. If the error our grandmothers made was to have surrendered too much of themselves for others, this was perhaps better than not being prepared to surrender anything at all. The fear of losing oneself can, in the end, simply become an excuse for not giving any of oneself away. Generations of women may have had no choice but to commit themselves to marriage early and then to feel imprisoned by their lifelong domesticity. So many of our generation have decided to put it off until it is too late, not foreseeing that lifelong independence can be its own kind of prison, too. ◆

From What Our Mothers Didn't Tell Us: Why Happiness Eludes the Modern Woman *by Danielle Crittenden.*
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Sex in the Stacks

Your local library may be the best place for your child to view porn, writes *Mark Herring*

If they think about them at all, many people see librarians the same way Eudora Welty did in *One Writer's Beginnings*: "I never knew anyone who's grown up in Jackson without being afraid of Mrs. Calloway, our librarian. [I]f you were a girl, she sent strong eyes down the stairway to test you; if she could see through your skirt she sent you straight back home: you could just put on another petticoat if you wanted a book...from the public library."

Fifty years ago, a critic for the *Saturday Review* wrote that a certain book was about as "interesting as sex with a librarian." Well, today there's no need to put on that extra petticoat. Sex with a librarian might still be boring, but the library itself may prove interesting after all. Sex is in libraries all over the country—right next to fiction and the reference sections, wherever the library's computers are up and running.

Walk up to any facility's public computer terminals and you could be confronted by what can only be described as presidential activity staring back at you. Because the *Intellectual Freedom Manual*—the American Library Association's (ALA) holy text on First Amendment issues—frowns upon labeling, sequestration, filtering or any notification or warning about explicit materials, most public libraries have fast become the chief purveyors of pornography via the Web. And because libraries account for half of all Internet access outside the home, Internet pornography is widely available to children. What may be strictly forbidden in the home, in other words, is readily available in public libraries, compliments of tax-payer dollars—and if a recent Virginia court ruling stands—with state approval.

In what the *Washington Post* described as "the first case of its kind," a Virginian district court judge ruled last November that a Loudoun County library "cannot use computer filters to prevent adults from viewing sexually explicit material on the Internet, even though the restrictions were meant to protect minors." Of course there may be a bright side. Remember how hard it used to be getting kids to the library? The trick now will be getting them to come home!

This is all greeted as so much good news by the ALA, the official organization representing 50,000 of our nation's librarians. The ALA has, for the past three decades, been desperately trying to shed the image of librarians as prim, bun-haired guardians of public taste and moral standards. Disbelieving readers should surf over to ALA's own web site at www.ala.org. Its "Great Internet Sites for Young Adults," links children directly to "Go Ask Alice," Columbia University's Health Education Program's site for teen questions about sex. Here curious tots may find answers to such burning questions as "Achy-Breaky Blueballs"; "Orgasms, Female Ejaculation and the G-Spot"; "Optimizing Solo Sex"; "Lesbian Oral Sex: It is Better to Give Than to Receive"; "Conservative Considers Coitus"; and "Masturbating Friends."

The ALA's progressive stance on sex is actually not surprising, given the political views that have come to dominate the organization. For the last thirty years, the ALA has, like so many other oversized, government-funded vehicles, become bogged down in leftist politics. The ALA, via rank-and-file librar-

Drawing by Yuri Kolyadenko

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ians, has condemned the U.S. military response in Kuwait, endorsed Clinton's Universal Health Care act, and defended the National Endowment for the Arts, to name but a few. Recent annual and mid-winter conferences have featured Gloria Steinem, Cornell West, Marian Wright Edelman, Deborah Prothrow-Smith, and Patricia Schroeder as keynote speakers. And national professional magazines, such as *Library Journal* and *American Libraries* (ALA's official mouthpiece), have taken up espousing the cause of gay rights.

For this voice *inter alia* other services, librarians pay upwards of $325 in ALA membership dues annually. But few librarians seem to mind. On the contrary, librarians have, for instance, been quick to defend and support gay and lesbian conferences and organizations, and even march in gay and lesbian "pride" parades. When, for example, *Library Journal* did its annual review of a San Francisco conference site, it highlighted not only eating establishments and hotels, but also entertainment in the general vicinity—including gay and lesbian bars complete with descriptions of themes or motifs (e.g., "leather"). And when Colorado voted in 1992 passage of its anti-discrimination law (known as Amendment 2 and later struck down by the Supreme Court's *Romer* v. *Evans* in 1996), the ALA risked tens of thousands of membership dollars attempting to negotiate a withdrawal from its contract with Colorado hotels.

While legal heads eventually (but barely) prevailed over social awareness, John Berry, long-time editor of *Library Journal*, accused Coloradans of gay-bashing and homophobia. Said Berry, "The cause of these embattled colleagues is all ours.... There's little doubt that gay and lesbian rights are high on the nation's agenda." Susan Hildenbrand, author of *Reclaiming the American Library Past*, was more to the point: "[T]he American Library Association was the first professional organization to have a gay and lesbian caucus, suggesting an early significant lesbian and gay presence in librarianship."

So what? the reader may ask. So what if the ALA espouses various liberal views?

It matters only in that it's these views that now govern what goes into libraries, and, more important, what does not. While sex runs rampant, conservative materials are often as rare as the once-proverbial librarian's hair bun.

Take Hayek's *Road to Serfdom*, a conservative classic if ever there was one. According to the Online Computer Library Center (OCLC)—a national database with a bibliographic resource of over thirty million items—this book is held in about 36 percent of library locations, a not bad showing. But John Kenneth Galbraith's *Affluent Society* is found in twice as many locations. Richard Weaver's *Ideas Have Consequences*, the conservative's manifesto *vade mecum*, turns up in 16 percent of holding libraries. But Michael Harrington's *The Other America*, the left's welfare *summa*, turns up in more than three times as many places.

With newer titles the difference is more dramatic. Kate Roiphe's criticism of feminist hysteria over sex, *Last Night in Paradise*, finds its way in almost six hundred locations; feminist Naomi Wolf's *Promiscuities: Secret History of Female Desire* is in just under twice as many locations. Vice-president Al Gore's *Earth in the Balance* appears in twenty times as many places as any five conservative titles on environmental themes.

Lest readers think this so much bean-counting, consider magazines and journals. According to OCLC, *Mother Jones* and the *New Left Review*, for example, may be found in three to four times as many locations as the *American Spectator* or *Chronicles*. Does the *New Republic* end up in 20 percent more libraries than *National Review* merely because *de gustibus non est disputandum*, or is there another reason? The pro-life publication, *Human Life Review*, finds it way to about three hundred and fifty libraries. But the Guttmacher Institute's bi-monthly publication, *Family Planning Perspectives*, is in nearly one thousand libraries.

When is comes to electronic sources, the disparity is more stark. If over a decade and a half of library experience is any gauge, researchers using standard library databases are twenty, fifty times, even a hundred times more likely to see a left-of-center slant over a moderate or right-of-center one on issues such as abortion, taxation, women, and the environment. Even if you're lucky enough to live in a large metropolitan area that supports several large public libraries, or have access to large institutional collections, you cannot escape the liberal approach to the World Wide Web that librarians have implemented.

Radical librarians? It does sound oxymoronic, but there it is. Conservatives know better than anyone that ideas have consequences. But they had better pay closer attention to ALA's ideas before their own are crowded out of the public square altogether. ◆

Mark Herring is dean of library services at Oklahoma Baptist University.

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Why Is Daddy in Jail?

For the crime of wanting to see his child, writes *Stephen Baskerville*

Someday Hollywood will make a movie of this: A father is sentenced to prison for wanting to take his son to a ballgame. Up against him is his ex-wife, the legal system, and various women's groups, all declaring him a deadbeat and a batterer, all of it untrue. But as a result, he's in a cell while his ex and her new boyfriend take little Johnny to a Mets game.

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Improbable? Only in the sense that Hollywood would ever make such a movie. Unfortunately it's an all-too-real-scenario that is taking place everyday across the country.

The case of a man we'll call Alan is fairly typical. Without warning, Alan came home one day to find his apartment cleaned out. His wife and two-year-old girl were gone. Shortly afterwards Alan was summoned to court and, as a "defendant," was ordered to stay away from his daughter most of the time and to begin making child support payments. His two-hour, thrice-weekly visits with his daughter were supervised and she was not allowed to stay with him overnight, since his wife alleged that he was dangerous and would kidnap her. These accusations eventually proved groundless, and the supervision was terminated. After a year Alan was permitted one overnight visit with his daughter per week. His wife, meanwhile, was never charged with making false accusations nor did the fabrication count against her in the custody proceedings. Various experts testified that Alan was no danger whatsoever to his daughter and that he is a devoted and loving father. All these findings were ignored by the courts. More than four years after his wife left, the child remains with her. Alan has spent $160,000 in inheritance on legal fees, not counting about 40 percent of his income for child support. He now lives hand-to-mouth.

Then there's Bruce, who was a truck driver in Boston and who came home one day to find his things on the street, the locks on his doors changed, and his wife's new boyfriend already moved in. Angry and bewildered, Bruce kicked in the door and began shouting. (He did not strike anyone.) His wife called the police, who arrived and took Bruce away in handcuffs. She got a restraining order preventing any contact with his three children. When his son was hospitalized with an illness, he was not allowed to visit. Eventually Bruce was allowed to see his children at a supervised visitation center with his wife and her boyfriend present in the next room.

Another man, Tom, tells of how he was living with his wife in California, where they were raising their three children as vegetarians like themselves. He thought she was content until one day when she told him she wanted to move back to her native Virginia. He agreed to move. After establishing residency in Virginia, however, she left with the children, and he was hauled into court.

Then, after an injury left him without an adequate income, he found himself in jail for failure to pay child support. Eventually he relocated to the Washington area to find work. Tom now drives three hours each way to get his children from his wife's place in Virginia, twice every other weekend. His ex-wife subsequently gave up her vegetarianism and obtained a court order preventing him from discussing diet with his children. His children are used as informers to monitor his compliance, and their relationship is strained.

Tom now belongs to a father's group that meets in Arlington, Virginia. Almost every member has a similarly painful story. Some have not seen their children in years. The children of a few will no longer speak to them. Others regularly drive hundreds of miles to visit their children in hotels or visitation centers. Several with no previous criminal records have spent time in jail.

The group is currently involved with the case of Michael Mahoney, a father in an Arlington jail awaiting sentencing for criminal contempt. Mahoney has already lost his job, his home, his savings, his freedom, and most recently his health (he has developed congestive heart failure, severe stomach ulcers, sleep apnea, and has undergone brain surgery for subdural hematoma). His private life has also been exposed to public view and he himself vilified on "Geraldo" and at least one other nationally televised talk show.

And these fathers are angry. Alan describes the system as a legal "child-kidnapping and extortion racket." Even more though, they are in shock. Like virtually all men in their position, none realized that such a thing could happen until it did.

Worse still, these men—and millions more like them—have suddenly found that the assumptions they had made about wife beaters, child molesters, "deadbeat dads," and O.J. Simpson are now being made about them. Many see themselves as having been abandoned not only by their wives but subsequently by friends and family members, who assume they "must have done something" to deserve losing their children. What their children "must have done" to deserve losing the care of even an imperfect father is seldom asked.

Fathers who attempt to contact their confiscated children or separated spouses can be arrested for "harassment" or "stalking," an offense that can be defined as "unwelcome conversation." "Stories of violations for minor infractions are legion," the *Boston Globe* reported last May. "In one case, a father was arrested for violating an order when he put a note in his son's suitcase telling the mother the

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boy had been sick over a weekend visit. In another, a father was arrested for sending his son a birthday card."

The practice of arresting fathers for attending public events such as their children's musical recitals or sports activities—events any stranger may attend—is one many find difficult to believe, but it is common. Last year National Public Radio broadcast a story on restraining order abuse centering on a father who was arrested in church for attending his daughter's first communion. During the segment, an eight-year-old girl wails and begs to know when her father will be able to see her or call her on the phone. The answer, because of a "lifetime" restraining order, is "never."

At once the most extensive and well-concealed denial of civil rights in America today, the plight of fathers and children is all but ignored by the media and virtually unknown beyond the rapidly increasing circle of its victims. Few people realize how easily and frequently children are taken from fathers who have committed no actionable offense and for reasons that have nothing to do with the children's wishes, safety, health, or welfare.

Contrary to common assumption, the prevalence of mother-custody is not a matter of simple sex-bias against fathers in mutually-agreed-to divorces. As American family courts now operate, a mother can have the father summoned to court and, without producing any evidence of wrongdoing, request that he be stripped of custody of his children and effectively ejected from his family, and in almost every case the judge will duly oblige.

Despite formal legal equality between parents, some 85 to 90 percent of custody awards go to mothers. One study in Arlington found that over a recent eighteen-month period, maternal custody was awarded in a hundred percent of decisions. This includes divorces in which the father has given neither grounds nor agreement. Most people probably accept some bias against fathers in custody cases when divorce is mutual. What is happening in family courts, however, is very different. It is one thing to say that young children need their mother; it is quite another to say a mother should have the arbitrary power to keep their father away.

Yet current judicial practice throughout most of the United States allows her to do just that. In fact, a mother can have had a half-dozen previous divorces, she can have deserted the marital home, she can abscond with the children, she can have committed adultery, she can level false charges, she can have assaulted the father, and none of these can be introduced as evidence against her in a custody decision. For a father, the simple fact of his being a father will be used to keep him away from his children six days out of seven, deprive him of any decision-making role, and dissolve his marriage over his objections.

Part of the problem originates in the advent of no-fault divorce in the early 1970s, which is often blamed by conservatives for leaving wives vulnerable to abandonment. Yet it has also left fathers with no protection against the confiscation of their children. No-fault divorce laws did not stop at removing the requirement that there be grounds for a divorce, so as to allow for divorce by mutual consent; they also provided for what writer Maggie Gallagher calls "unilateral" divorce and removed any consideration of grounds from custody decisions.

Though changes in the divorce laws were legislative, it is the practitioners of family law who have benefited both in terms of power and profit, and they have not hesitated to exploit the opportunities to the full. Dickens' observation, "the one great principle of the...law is to make business for itself," could hardly be more strikingly (or destructively) validated.

There is nothing in the no-fault laws that requires a judge to honor a mother's initial request to remove the children from the father's care and protection. A judge could simply decide that, *prima facie*, neither the father nor the children have committed any infraction that justifies their being forcibly separated, that they have a fundamental human and constitutional right not to be forcibly separated, and that neither the mother nor the court has any grounds to separate them.

Unfortunately, not only is the legal machinery an accomplice; in some ways it is the principal instigator. A mother who consults a divorce attorney will be advised that her best chance of gaining custody is simply to take the children and all their effects and leave without warning. If she has no place to go, she will be told that by accusing the father of sexual or physical abuse, however vaguely (often simply stating that she is "in fear"), she can easily obtain a restraining order immediately forcing him out of the family home. She will

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also learn that even if her claims are false, there are no legal consequences she will face for making them; her trumped-up accusations cannot even be used against her in a custody decision. In fact, they work so strongly in her favor that failure to advise a female client of these options may constitute legal malpractice.

Far from being punished for child-snatching and false accusations, then, she is almost certain to be rewarded. Mothers who abduct children and keep them from their fathers, with or without abuse charges, are routinely given immediate "temporary" custody. But it is almost never temporary. Once a mother has custody, it cannot be changed without a lengthy (and, for the lawyers involved, lucrative) court battle. The sooner and the longer she can establish herself as the sole caretaker, the more difficult and costly it is to dislodge her. Further, the more she cuts the children off and alienates them from the father, slings false charges, delays the proceedings, and obstructs his efforts to see his children, the better her chance for obtaining sole custody. She can then claim child support and perhaps her own legal fees from the father.

In the absence of paternal wrongdoing, the Kafkaesque logic of family courts readily supplies a rationale for summarily stripping the father of custody. Usually it is said that the parents can't agree, so naturally the parent who is trying to exclude the other should get the children and make the decisions, even if the only thing the left-behind parent can't agree to is the taking of his children. Or the father is alleged to be planning to "kidnap" his children back—usually with no evidence other than his opposition to the initial abduction by the mother.

As for the father, any restraint he shows throughout all this is certain to cost him dearly, as most discover too late. On the other hand, reciprocal belligerence and aggressive litigation on his part may carry enough hope of reward to keep him interested in the game. But the vast majority (about 90 percent who cannot pay the five- and six-figure sums required to fight a full-scale custody battle) are branded as having "abandoned" their children and simply pushed out of the family.

Some fathers' rights activists are now determined to fight fire with fire, and imitate the techniques of mothers: If you think she is about to snatch, snatch first. Then conceal, obstruct, delay, accuse, and so forth. "If you do not take action," writes Robert Seidenberg, author of *The Father's Emergency Guide to Divorce-Custody Battle*, "your wife will." Thus we now have the nightmare scenario of a race to the trigger: Whoever snatches first survives.

For the left-behind parent, the loss of his children is only the beginning of his troubles. It may also be the beginning of ours as well, for the legal and political implications of these decisions extend well beyond the family. Other violations of basic civil rights and liberties logically follow when courts successfully assert the power to invade a family and remove children from the care of parents who have done nothing wrong.

Despite the protection of the First Amendment, family courts decide what religious worship parents may take their children to: A 1997 ruling by the Massachusetts Supreme Court, which prevented a fundamentalist Christian father from taking his children to services against the opposition of an Orthodox Jewish mother, was unusual only in that it made the papers. A judge in Virginia sparked a protest, but little news coverage, last year when he enjoined a father from taking his son to synagogue on Passover.

Parents' discussions with their children about matters such as religion and politics may also be controlled by family court judges. Tom's court order preventing him from discussing a vegetarian diet with his children is not unusual. Another father in the Arlington group had weekend visits with his children reduced when a judge decided that soccer was a more important Sunday activity than church.

The Fourth Amendment's protection against unreasonable searches and seizures similarly seems to mean little to family court judges. Parents who are accused of no crime and who have given no grounds or agreement for divorce are routinely required to surrender personal diaries, notebooks, correspondence, financial records, and other documents—all ostensibly to determine their fitness as parents, even when it has never been questioned. They are regularly interrogated behind closed doors about intimate family matters that most parents would not normally discuss with strangers. If the strain of losing their children or undergoing this legal nightmare is too great, they are wise to conceal any contact with therapists, family counselors, psychologists, and psychiatrists, since these otherwise privileged consulta-

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tions and records can be subpoenaed and used to separate them from their children. Parents swept into this litigation are terrified to discuss anything with their children or spouses for fear that what they say will be used against them in court. The use of children as informers is common.

As well, a custody trial will likely be held behind closed doors and without any record of what is said, free of scrutiny by press and public. Delays of months and years are common, as the parent with "temporary" custody tries to stall. Since custody cases are not criminal prosecutions, they do not fall under the protections of the Sixth Amendment, but given other abuses they often amount to the same thing, being the first stage in the criminalization and incarceration of fathers.

Indeed, while the same article stipulates a right to counsel in criminal cases, fathers can be jailed without a lawyer. One of the most notorious and common abuses in family courts is the incarceration of fathers for extended periods without charge and without trial. The guarantee of due process does not prevent family courts from jailing parents on civil contempt for weeks, months, or even years without trial.

The notorious Elizabeth Morgan case, in which a mother abducted her child and, for refusing to to reveal her whereabouts, spent two years in prison for civil contempt, was publicized only because it involved a mother. Much more common instances of fathers languishing in prison for years seldom receive any publicity. Buried as a filler in the *Washington Post* last January was an Associated Press report that Odell Sheppard, a father in Chicago who also would not or could not reveal the whereabouts of his two-year-old daughter, was released after serving ten years for civil contempt. Despite what "may have been the longest jail term for civil contempt ever in the United States," the case seems to have prompted no comment in either the local or national press or among civil libertarians.

Courts routinely order fathers, whose children have been taken from them involuntarily and with no grounds, to support those children financially. They can and do summon fathers to court so frequently that they lose their jobs and then incarcerate them for failure to pay child support. Courts these days will even order men to support children who are acknowledged not to be theirs. In 1994, the Maryland court of appeals refused to rescind a child support order against a man who, according to DNA tests, was not the father of the child he was ordered to support. This was despite the fact, too, that the mother and the true father joined the falsely-accused man in requesting the order be changed. An October series in the *Los Angeles Times* reported that in Los Angeles alone there are 350 new cases each month of men required to support children who are established by DNA testing not to be theirs. Yet the Los Angeles County District Attorney insisted that he has no intention of seeking to overturn support orders based on false identifications.

The Eighth Amendment's prohibition of cruel and unusual punishment does not stop family courts from summarily depriving fathers of professional licenses, drivers' licenses, and passports that bear no connection with their alleged offense. Fathers who are alleged (but again not formally charged and never proven) to be delinquent in child support payments have had their cars booted and confiscated, and their names published in the newspapers.

Fathers are also ordered by courts into employment; the wages are then confiscated. Last February the California Supreme Court overturned a hundred years of precedent when it ruled in the case of *Moss* v. *Superior Court* that this is not contrary to the Thirteenth Amendment prohibition of involuntary servitude. In the past, the Supreme Court has recognized that, "Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service. This congressional policy means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor." Yet states now routinely do precisely this.

In April 1998, a custodial father in Illinois who stayed at home to care for his three children and who received no child support from the mother was arrested under a little known state law that makes it a felony for a man to be "deliberately unemployed." "Men in Illinois have become the target of a witch hunt," the man's attorney told Reuters. "Men are hounded if they owe child support and Mom is on welfare. Now Mom is the deadbeat parent, and the man is hounded because he is on welfare."

As for the children, courts that piously proclaim their commitment to "the best interest of the child" seldom hesitate to employ heavy-handed methods against them as well. The *Los Angeles Times* reported last April that "three children, whose only crime was their reluctance to testify against their father, were jailed for twelve days in Los Angeles County's overcrowded Central Juvenile Hall and brought to

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court in handcuffs and leg chains."

For their part, a few fathers' groups have countered by filing federal class action suits claiming abrogation of civil rights "under color of law", including denial of due process and equal protection. Violations of the First, Fourth, Fifth, Sixth, Eighth, and Ninth Amendments are also alleged, and some go so far as to invoke anti-racketeering statutes. There is a substantial body of federal case law recognizing parenting as a basic constitutional right and requiring its protection under the Fourteenth Amendment: "The liberty interest and the integrity of the family encompass an interest in retaining custody of one's children, and thus a state may not interfere with a parent's custodial right absent due process protections," according to the 1981 decision, *Langton* v. *Maloney*. Justice Thurgood Marshall also held for the majority in the 1978 case *Quilloin* v. *Walcott* that a divorced father could not be treated differently from a father who is married and still living with his child. Yet such apparently unequivocal constitutional principles seem rarely to be applied by state courts, and the federal courts steadfastly resist becoming involved.

This discrepancy is probably best explained by a very realistic fear that once this door is opened, the federal judiciary would be inundated with cases, so massive is the number of violations.

As it is, some twenty-three million American children now live in fatherless households, virtually half a generation. Nearly 2.5 million will join their ranks this year, according to the National Fatherhood Initiative. The crisis of fatherless children has been called "the most destructive trend of our generation," by David Blankenhorn, author of *Fatherless America*. Even Bill Clinton acknowledges that "the single biggest social problem in our society may be the growing absence of fathers from their children's homes," and Al Gore has declared in more accusatory terms that "absent fathers are behind most social woes." This opinion is shared by almost 80 percent of respondents to a 1996 Gallup poll.

Indeed, nothing else accounts for as many major social problems. Recent figures from the Department of Health and Human Services confirm that violent crime, drug and alcohol abuse, teenage pregnancy, emotional and behavioral disorders, teen suicide, poor school performance and truancy, all correlate more strongly to fatherless homes than to any other single factor, surpassing both poverty and race. The overwhelming majority of prisoners, juvenile detention inmates, high school dropouts, pregnant teenagers, adolescent murderers, and rapists all come from fatherless homes.

The Washington Post, New York Times, and other major media avoided mentioning that Mitchell Johnson, instigator of the shootings in Jonesboro, Arkansas, had been taken from his father, whom he was said to be close to, and moved to another state. Even as the crisis of fatherhood gains selective recognition by policymakers and the media, however, attention is confined almost entirely to "the prodigal father" who has "abandoned" his children. Fathers now get it from both sides, since the conservative campaign for "responsible fatherhood" may unwittingly reinforce the vilification of fathers in the media and by politicians and feminists. The resulting message is that until proven otherwise, fathers are presumed to be irresponsible louts whose eagerness to desert their families accounts for all our social failures.

Yet Sanford L. Braver, in his recently published book, *Divorced Dads: Shattering the Myths*, shows that far from abandoning their children, most divorced fathers make heroic efforts against enormous obstacles to stay in touch with them.

SCAPEGOATING FATHERS HAS predictably done little to alleviate the problems associated with father absence. Indeed, it cannot even solve the one problem in terms of which politicians most often proclaim their commitment to father involvement: the collection of child support. With a massive army of some 59,000 enforcement agents (the Drug Enforcement Agency has about 7,500), the Federal Office of Child Support Enforcement perseveres in its losing battle to squeeze money out of ejected fathers who more often than not are unemployed, impoverished, imprisoned, disabled, or dead. The General Accounting Office found in 1992 that as many as 14 percent of fathers who owe child support are dead, and 66 percent "cannot afford to pay the amount ordered." Some 52 percent earn less than $6,200 a year, according to the Institute for Research on Poverty at the University of Wisconsin.

Far more useful than trying to shake down fathers with no money would be to reform a legal system that

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forces so many fathers out of their children's lives in the first place. But in addition to wives and the judiciary, fathers must also contend with feminist groups, who loom as the most formidable opponents of joint custody laws and are now promoting legislation that would openly legitimize the current epidemic of maternal child-snatching. The purported justification is domestic violence. An article posted on the NOW website asserts that preserving fathers' rights to the care and protection of their children "is dangerous for women and their children who are trying to leave or have left violent husbands/fathers."

This of course begs the question of why children can be taken virtually at whim from the vast majority of fathers by whom no violence is ever demonstrated or even alleged, nor why it should be any more dangerous trying to leave truly abusive spouses who can be prosecuted under existing laws and who are precluded from custody under presumptive joint custody statutes. Yet in the present climate, such obvious questions are seldom asked. So successful is anti-father propaganda now that even mainstream feminist organizations regularly use the term "batterer" as essentially synonymous with "father." In political terms, a NOW resolution asserts that the political activities of fathers' groups constitute "using the abuse of power in order to control in the same fashion as do batterers."

Both domestic violence and child abuse are serious problems, but they are by no means sex-specific. Moreover, accusations of child or spousal abuse are a widespread method of winning sole custody. NOW claims that "false accusations by women are in fact rare," but saying this does not make it so. Statistically they are not rare at all. Overall, more than two-thirds of child abuse reports are unsubstantiated, according to the National Clearinghouse on Child Abuse and Neglect Information, and the proportion becomes overwhelming when custody is an issue. But more tellingly, NOW itself would seem to be proving just how false they are with its own legislative agenda. By legitimizing child stealing under the guise of protecting victims of domestic violence, NOW is openly practicing on the political level precisely what it claims is not happening in the family courts: the use of "battering" as a red flag to separate children from fathers who are guilty of no such thing.

There is no evidence that fathers commit any more spousal or child abuse than mothers; in fact fathers in intact families are about the least frequent perpetrators of either. The National Family Violence Survey, funded by the National Institute of Mental Health, estimates that men are slightly more likely than women to be victims of severe domestic violence. Nor can "the high rate of attacks by wives" be explained "largely as a response to or as a defense against assault by the partner," according to one of the survey's authors, Murray Straus, in a contribution to the 1996 book, *Domestic Violence*.

More to the point, mothers—especially single mothers— are much more likely than fathers to abuse children. According to a major 1996 study by the Department of Health and Human Services, women aged twenty to forty-nine are almost twice as likely as men to be perpetrators of child maltreatment. "It is estimated that ... almost two-thirds [of child abusers] were females," the report states. Given that male perpetrators are not necessarily fathers but much more likely to be boyfriends and stepfathers, fathers emerge as the least likely child abusers.

In fact, about the most dangerous place for a child is the home of a single mother. The HHS study reiterates the already well-established fact that children in single-parent homes are at much higher risk for physical and sexual abuse than those living in two-parent homes (up to thirty-three times higher when a live-in boyfriend or stepfather is present). As Maggie Gallagher sums it up in her 1996 book, *The Abolition of Marriage*: "The person most likely to abuse a child physically is a single mother. The person most likely to abuse a child sexually is the mother's boyfriend or second husband.... Divorce, though usually portrayed as a protection against domestic violence, is far more frequently a contributing cause."

At one time this may have been considered common sense, since two parents check one another's excesses and the father was seen as the children's natural protector. Not only has this role now become politically incorrect, the current system has managed to pervert it into a fault. What male violence does occur may well be the result of custody disputes more often than it is the cause, after all, since common sense would again suggest that fathers with no previous proclivity to violence could very well erupt when

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their children are arbitrarily taken from them. One is tempted to say this is what fathers are for: to become violent when someone interferes with their offspring. A 1997 study by Anne McMurray of the Griffith University School of Nursing in Australia that began with the express purpose of providing "definitive explanations for the violent behaviors of certain males," concluded that "regardless of the male's propensity toward violence" the circumstances most conducive to it arose "during the process of marital separation and divorce, particularly in relation to disputes over child custody, support, and access."

"These men," McMurray continued, "from a range of socioeconomic backgrounds and age groups, freely discussed episodes in which they had either planned, executed, or fantasized about violence against their spouses in retaliation for real or perceived injustices related to child custody, support, and/or access."

Interestingly, while violence against wives is well-publicized, the huge increase in violent attacks by fathers against judges and lawyers has gone completely unreported in the mainstream press. According to a recent article in the *National Law Journal*, the year 1992 was "one of the bloodiest in divorce court history—a time when angry and bitter divorce litigants declared an open season on judges, lawyers, and the spouses who brought them to court."

NOW and others further attempt to defend the power to take children from their fathers by invoking popular but facile cliches about marital harmony, saying that "most studies report that joint custody works best when both parents want it and agree to work together," but that it "is unworkable for uncooperative parents." This tautological reasoning is of course simply an extension of assumptions that have long been invoked by parents of both sexes as self-justification for their wish to divorce. As such, fathers who have acquiesced in this casuistry have only themselves to blame now that it is being taken to its logical next step to justify rewarding the most belligerent of the warring parents and throwing the other out of the family altogether. After all, if joint custody requires agreement and cooperation between parents, the most effective method for the parent desiring sole custody is to sabotage the situation and to be as belligerent and uncooperative as possible.

In fact, joint custody has repeatedly been demonstrated to reduce parental conflict for precisely this reason. A study by Judith Seltzer of the University of Wisconsin based on data from the National Survey of Families and Households concluded that joint custody, even when imposed over the objection of one parent, reduces post-divorce conflict. Similarly, a study team headed by Braver found that "both child support compliance and paternal visitation were highest in those cases where joint custody was awarded against the mothers' wishes but in conformity with the fathers' wishes." The author concludes that these results demonstrate "the value of joint legal custody even when the couple does not initially agree to it. Joint custody appears to enhance paternal involvement, child support compliance, and child adjustment." Perhaps most important, it takes away much of the incentive to snatch the children in the first place. (Giving sole custody to the left-behind parent, as some have proposed, would naturally create a stronger deterrent.) For similar reasons, states with presumptive joint custody laws report significantly fewer divorces.

As for the connected tautology that parental conflict in itself justifies divorce, this is seldom justified as far as children are concerned, as any child will tell you. "Children...can be quite content even when their parents' marriage is profoundly unhappy for one or both partners," write Judith S. Wallerstein and Sandra Blakeslee in their 1996 book, *Second Chances*. "Only one in ten children in our study experienced relief when their parents divorced. These were mostly older children in families where there had been open violence and where the children had lived with the fear that the violence would hurt a parent or themselves."

Specious justifications for a system that spawns massive corruption, violates basic constitutional rights, destroys the homes and lives of innocent children, and leads to serious social ills has carried the day because of our willingness to buy into cliches that disguise the reality and extent of what is taking place. We have sanitized a breathtaking injustice with buzzwords such as "divorce" and "custody battle" that imply mutual consent, when in most cases no such thing exists. Yet however palatable we try to render this abuse, there is no escaping the central fact

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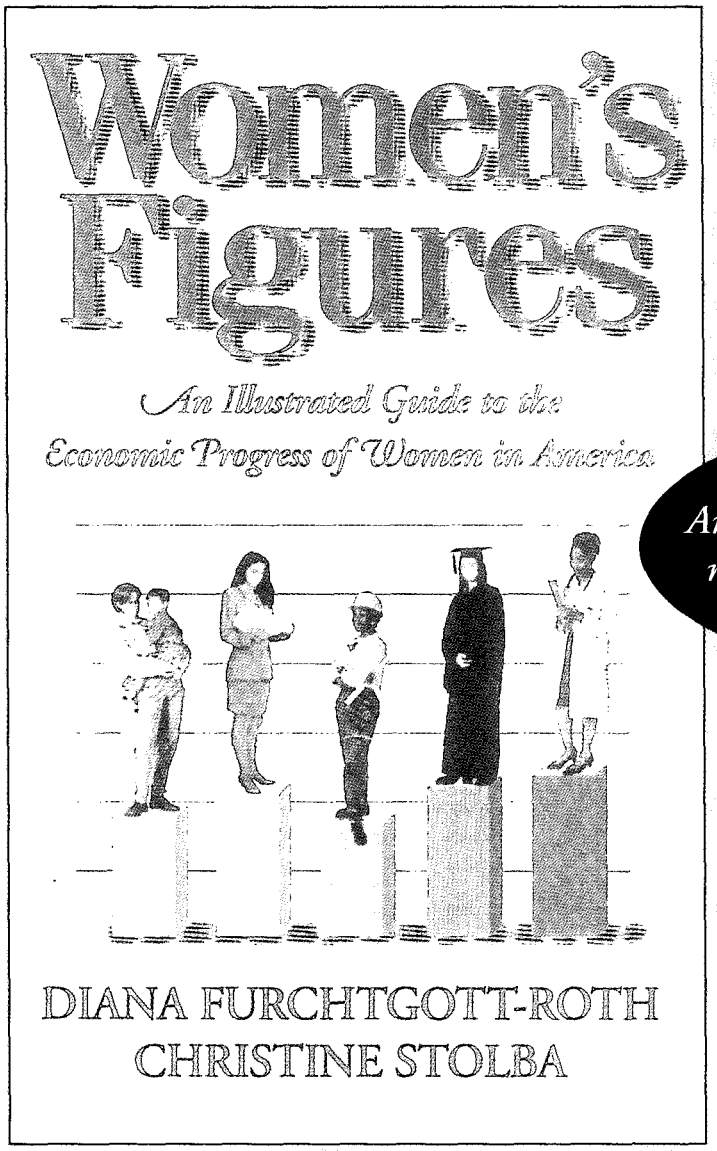
that it has very little to do with the needs of children and everything to do with the power of certain groups of adults.

But we either maintain a distinction between what is actionable in a court of law and what is not, or we simply haul people into court because we don't like their methods of child-rearing or, for that matter, because of our wish for a new boyfriend. Frightening as it may seem, using the courts and police to punish spouses for what may be nothing more than ordinary family disagreements now seems to be accepted without question, and the bottom line is that any father may now find himself pursued by federal agents because he protests the way his children have been taken from him. ◆

Stephen Baskerville teaches political science at Howard University.


Women's Figures
An Illustrated Guide to the Economic Progress of Women in America
DIANA FURCHTGOTT-ROTH
CHRISTINE STOLBA

APRIL 8TH IS Pay Equity Day, the annual rite of whining over income differentials between men and women in America. The only problem is that all the bad news is *wrong*, and we're crashing the party this year with a new book that sets the record straight.

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"Documents the steady movement of American women into the schools, universities, professions, workplaces, and up the ladders to success in our society. The authors' careful collection and analysis of data illuminate the extraordinary achievement of American women in the past half century." — JEANE KIRKPATRICK

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Continued from page 2 ambitious—they may want to be surgeons or executives, politicians or artists. For them the competing demands of family and work will always be difficult to resolve. But I think when we compare our conditions for happiness, most of our lists would share these essentials.

The women who don't desire these things—those who like living alone or who find perfectly fulfilling the companionship of their friends and cats or whose work eclipses their need for family—may be sincerely happy, but they should not be confused with the average woman.

The Roper Starch polling firm has asked American women every few years since 1974 about their preferences for marriage, children and career. The poll conducted in 1995 shows that the majority of women—55 percent—hope to combine all three, and a full quarter—26 percent—want marriage and children but not a career.

Unfortunately, for nearly thirty years, the public policies and individual ways of life that feminists have encouraged, and the laws they have pushed through, have been based on their adamant belief that women want more than equality with men or options outside their families; they want full independence from husbands and families.

And this is where ground zero of the debate is today. It's not about "going back"—as if that were even possible! Nor is it about whether women should have to make the Sophie's Choice decision of work versus children. It's about the best way to realize our aspirations—all of them. In order to do that, we have to begin by rejecting the ingrained feminist assumption that for most of us our happiness is something that can be achieved independently of men and family.

The feminist wisdom so many of us received growing up—to delay marriage, to delay children, to put everything into our work—may help us achieve good jobs, but little else. It's harder to meet and attract men in your thirties than in your twenties; it's more difficult to start families later in life, not to mention extremely inconvenient to have to deal with a newborn in mid-career. It's also very tough, in the aftermath of the sexual revolution, to find men willing to marry and take on the responsibilities of family when there's a big supply of single women out there willing to sleep with them without demanding commitment in return.

In my new book, *What Our Mothers Didn't Tell Us: Why Happiness Eludes the Modern Woman* (excerpted on p. 14), I propose that we do go back at least in one sense—to the idea of early marriage, and motherhood. Contrary to feminist wisdom, if a woman today marries in her early twenties and has children soon after, she is not condemning herself (if that is the word) to a life of domesticity like her grandmother. She is instead settling her personal life early, when it is easiest to do it, and freeing herself up for a career (if that's what she chooses), when her children are older and in school. And if enough of us are willing to do this, we also shut down the system of no-strings-attached sex that has so benefited men and injured women.

Feminists will of course reject this idea, but that's because they insist on taking an androgynous view of the sexes, in which the only way we can maintain women's equality is if we do precisely the same things and occupy precisely the same roles in life as men, whether it's changing diapers and taking out the garbage or fighting fires and going into combat. The moment a woman admits to wanting to be a wife, or to care for her children, she is seen as somehow letting down the side. But these desires persist, intensely. Perhaps that's why feminists have supported Bill Clinton so vehemently: Like him they believe that if a fact is denied, it ceases to exist.

But as so many of my generation have found, while independence might be nice as a young single woman, it's not so nice as a single mother or as a single forty-year-old. And if we want to change our situation, we may not need to *go* back but we may have to begin *looking* back, honestly, at some of the ideas we rejected in favor of the often hollow freedom we enjoy today.

◆ *Note to Readers:* This will be my last issue as editor of TWQ. It's been an enormous pleasure producing this journal and corresponding with all of you. I'm grateful to the Independent Women's Forum for the opportunity—and editorial freedom!—it has graciously given me these past four years. I'm grateful as well to my wonderful colleagues, contributors, and readers, who made TWQ the success that it is, and I'm sure will continue to be. Adieu.

~ Danielle Crittenden

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One last observation . . .

Vive la Différence!

Or at least deal with it

A FRIEND FORWARDED these philosophical reflections upon the differences between men and women:

Nicknames

IF EMMA, SUZANNE, Debra, and Michelle go out for lunch, they will call each other Emma, Suzanne, Debra, and Michelle. But if Mike, Phil, Rob, and Jack go out for a pint, they will affectionately refer to each other as Fat Boy, Godzilla, Peanut-Head, and Useless.

Money

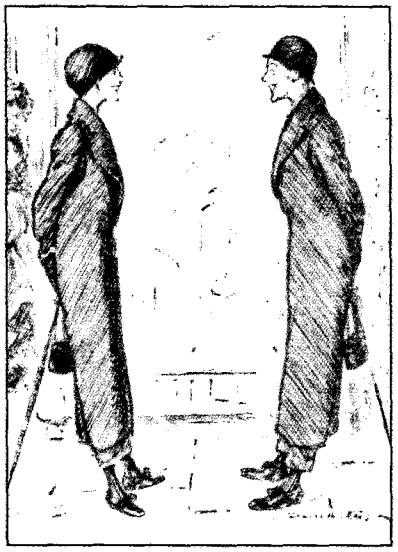
A MAN WILL pay two dollars for a one-dollar item he wants. A woman will pay one dollar for a two-dollar item she doesn't want.

Dining out

WHEN THE BILL arrives, Mike, Phil, Rob, and Jack will each throw in $20, even though it's only for $22.50. None of them will have anything smaller, and none will actually admit they want change back. When the girls get their bill, out come the pocket calculators.

Bathrooms

A MAN HAS five items in his bathroom—a toothbrush, shaving cream, razor, a bar of soap, and a towel from the Holiday Inn. The average number of items in the typical woman's bathroom is 437. A man would not be able to identify most of these items.



Cats

WOMEN LOVE CATS. Men say they love cats, but when women aren't looking, men kick cats.

Arguments

A WOMAN HAS the last word in any argument. Anything a man says after that is the beginning of a new argument.

Dressing Up

A WOMAN WILL dress up to: go shopping, water the plants, empty the garbage, answer the phone, read a book, get the mail. A man will dress up for: weddings, funerals.

The Natural State

MEN WAKE UP as good-looking as they went to bed. Women somehow deteriorate during the night.

The Future

A WOMAN WORRIES about the future until she gets a husband. A man never worries about the future until he gets a wife.

Success

A SUCCESSFUL MAN is one who makes more money than his wife can spend. A successful woman is one who can find such a man.

Marriage

A WOMAN MARRIES a man expecting he will change, but he doesn't. A man marries a woman expecting that she won't change, but she does.

Offspring

AH, CHILDREN. A woman knows all about her children. She knows about dentist appointments and romances, best friends and favorite foods, secret fears and hopes and dreams. A man is vaguely aware of some short people living in the house. ◆

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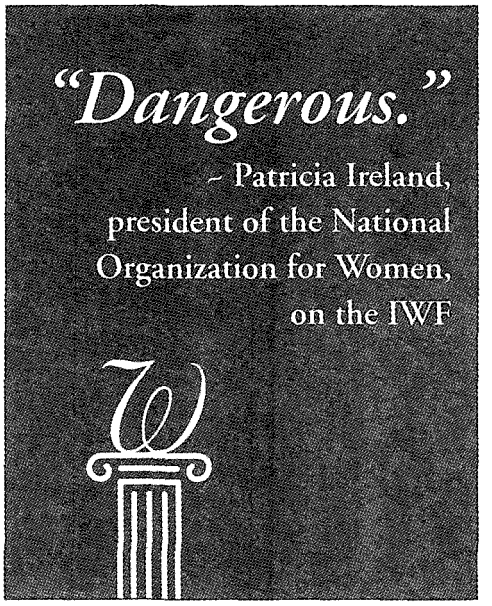
FOR THE PAST six years, the Independent Women's Forum has been taking on the old establishment of feminist organizations—and winning. "The IWF has a profile almost unheard of for a group that is the new kid on the block," writes the *Boston Globe*. "In the marketplace of ideas, from the national news media all the way down to local radio, the IWF has shown its real strength....[The] IWF is well on its way to becoming the foremost media nemesis of the feminist movement."



Why has the IWF been so successful? Because the women who make up the IWF are not radical ideologues—they're businesswomen, economists, lawyers, truck drivers, and also mothers. Because the IWF promotes individual responsibility, strong families, limited government, and opportunity—policies that help *all* Americans. Because the IWF, a nonpartisan, nonprofit Washington organization, sponsors speaker events and conferences noted for their provocative and free-ranging debates. And because the IWF publishes *The Women's Quarterly*—an intellectual antidote to *Ms.*—which syndicated columnist Mona Charen praises as, "My type of women's magazine! With humor and sarcasm but also with warmth and passion, these women offer an intelligent refutation of the leading feminist nonsense that is swallowed so uncritically by the mainstream press."

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